

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: RALPH ROBERTS . Adv. No. 12-06131
REALTY, LLC, .
 . Detroit, Michigan
Plaintiff, . January 21, 2014
v. . 9:02 a.m.
 .
JON SAVOY, et al., .
 .
Defendants. .
.

HEARING RE. TRIAL
BEFORE THE HONORABLE THOMAS J. TUCKER
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 THE CLERK: Please rise. This court is now in
2 session, the Honorable Thomas J. Tucker presiding. You may
3 be seated. Court will call the matter of Ralph Roberts
4 Realty, LLC, versus Savoy, 12-6131.

5 MS. MCCOLLUM: Good morning, your Honor. Hannah
6 McCollum for Ralph Roberts Realty, the plaintiff.

7 MR. KWIATKOWSKI: Good morning, your Honor. Scott
8 Kwiatkowski on behalf of the defendants.

9 THE COURT: All right. Good morning. This is the
10 time for trial. Parties ready to proceed?

11 MS. MCCOLLUM: Yes, your Honor.

12 MR. KWIATKOWSKI: Yes, your Honor.

13 THE COURT: All right. I'm looking at the exhibits
14 here, my copies of these exhibits. We've got plaintiff's
15 exhibits. Ms. McCollum, you went and renumbered all the
16 exhibits?

17 MS. MCCOLLUM: I did. And, your Honor, I apologize.
18 They didn't make any sense as they were originally presented
19 in the final pretrial order, so what I did was I regrouped
20 them with respect to each property, so now each exhibit tab
21 is one particular property. The original final pretrial
22 order had some of the property information broken out and
23 some of it lumped together.

24 THE COURT: Is this just a rearrangement? Is there
25 any difference, additions, subtractions, from the final

1 pretrial order list of plaintiff's exhibits --

2 MS. MCCOLLUM: No.

3 THE COURT: -- to this set?

4 MS. MCCOLLUM: No.

5 THE COURT: So, Mr. -- now, of course, the parties
6 stipulated in the court order to the final pretrial order
7 that all the plaintiff's exhibits that were listed in there,
8 1 to 24, would be admitted into evidence at trial by
9 stipulation. Mr. Kwiatkowski, you've had a chance to review
10 the plaintiff's renumbered, rearranged exhibits here, 1
11 through -- I guess they're now 1 through 15; right?

12 MR. KWIATKOWSKI: Yes, your Honor.

13 THE COURT: Do you agree that -- based on the final
14 pretrial order, that the -- all these trial exhibits --
15 plaintiff trial exhibits, 1 through 15, should be admitted
16 into evidence?

17 MR. KWIATKOWSKI: Yes, your Honor.

18 THE COURT: All right. I assume that's what you
19 want, Ms. McCollum.

20 MS. MCCOLLUM: Yes, please, your Honor.

21 THE COURT: All right. So Plaintiff's Exhibits 1 to
22 15 -- currently numbered 1 to 15 are admitted into evidence,
23 all of them.

24 (Plaintiff's Exhibits 1-15 received at 9:05 a.m.)

25 THE COURT: So then we have defendant's exhibits.

1 In the final pretrial order they were A through R, as a
2 practical matter, A through Q. A through R -- R was just
3 sort of a catch-all. Mr. Kwiatkowski, do we have A through Q
4 here, or what do we have?

5 MR. KWIATKOWSKI: Yes, we do, with the exception
6 there was no N, so I just omitted N and stuck to the
7 lettering that I had in the joint final pretrial order
8 because N was documents produced pursuant to discovery
9 requests. There was no documents produced, so --

10 THE COURT: All right. So in the exhibits you're
11 representing here at trial, you've got A through M, O, P, and
12 Q; is that right?

13 MR. KWIATKOWSKI: That is correct.

14 THE COURT: All right. And you want all of those
15 admitted into evidence, I presume?

16 MR. KWIATKOWSKI: Yes, your Honor.

17 THE COURT: Ms. McCollum, the actual exhibits marked
18 here for the defendant that we've been discussing are the
19 same as those that were listed in the final pretrial order;
20 is that right?

21 MS. MCCOLLUM: It's actually not right. The final
22 pretrial order lists for P a summary of expenses, and what
23 defendant has actually provided is the actual back-up for the
24 expenses, and the first time I've seen this is yesterday, but
25 given that we had stipulated that the summary would be

1 admitted, I don't really see that I have any grounds to
2 object to the actual back-up documentation being admitted as
3 well.

4 THE COURT: All right. So the plaintiff then agrees
5 that these exhibits presented as trial exhibits here today
6 for the defendant, A through M and O, P, and Q, should be
7 admitted into evidence; is that right?

8 MS. MCCOLLUM: Yes, your Honor.

9 THE COURT: And I assume that, again, that's what
10 you want, Mr. Kwiatkowski?

11 MR. KWIATKOWSKI: Yes, your Honor.

12 THE COURT: All right. Those exhibits then are
13 admitted into evidence at trial here.

14 (Defendant's Exhibits A-M, O, P, and Q received at 9:07
15 a.m.)

16 THE COURT: All right. Is there anything else that
17 either of you thinks we need to talk about before we have
18 opening statements?

19 MS. MCCOLLUM: Not on the plaintiff's side, your
20 Honor.

21 MR. KWIATKOWSKI: No, your Honor.

22 THE COURT: All right. Ms. McCollum, on behalf of
23 the plaintiff, your opening statement.

24 OPENING STATEMENT

25 MS. MCCOLLUM: Thank you, your Honor. As you know,

1 we're here because plaintiff, Ralph Roberts Realty, sued Jon
2 Savoy -- sorry -- Jon Savoy, Arnold Hassig, Adam Hassig,
3 Prime Residential Properties, Ryan Residential Properties
4 Group, Adam Residential Properties Group, and 1836 Brys, LLC,
5 on account of funds that plaintiff believes are owed to it on
6 account of the 16 properties that defendants acquired through
7 plaintiff's investor program. Of the 16 properties that were
8 acquired by defendants, 3 were redeemed, 1 was sort of a
9 settlement, 4 were split and paid, 4 were sold and no split
10 was paid to defendant -- sorry -- to plaintiff -- defendants
11 allegedly lost money on those properties -- and 4 have not
12 yet been sold either because they're being sold on land
13 contract or because they simply have not been sold yet.

14 The defendants in their pleadings have admitted that
15 they were a part of plaintiff's investor program, and,
16 indeed, they did split and pay on four properties. We
17 will -- plaintiff will show through the testimony of Ralph
18 Roberts and Ray Confer today that defendants were some of the
19 earliest participants in plaintiff's investor program, that
20 they understood the program, that they understood how splits
21 would be calculated in terms of properties that were flipped,
22 properties that were held and rented, properties that were
23 held and sold on land contract, that each property purchased
24 through the investor program was a separate transaction, and
25 that there were no offsets because, as plaintiff has stated

1 before and will state again, that there was no possibility
2 actually to lose money in this program, and, in fact,
3 plaintiff will show today that all of the houses in this
4 program that we're specifically discussing today were
5 profitable.

6 As a result, we will show and we believe that
7 defendants are liable in at least the amount of the \$16,000
8 for acquisition fees as well as the amounts listed in the
9 final pretrial order and pleadings to date, and I think that
10 number is something like 80 or \$90,000 in total on the four
11 houses that have been sold and that were not paid and on the
12 four properties that have not yet been sold and are still in
13 defendant's possession. And I have nothing further in my
14 opening argument.

15 THE COURT: All right. Thank you. Mr. Kwiatkowski,
16 you may make an opening statement now or if you wish you may
17 defer it until after the close of plaintiff's case in chief.
18 What is your preference?

19 MR. KWIATKOWSKI: I would choose to defer.

20 THE COURT: All right. Plaintiff's first witness.

21 MS. MCCOLLUM: Your Honor, I'd like to call Ralph
22 Roberts to the stand, please.

23 THE COURT: All right.

24 RALPH ROBERTS, PLAINTIFF'S WITNESS, SWORN

25 THE CLERK: If you can take a seat, please, and

1 state and spell your name for the record.

2 THE WITNESS: Ralph Roberts, R-a-l-p-h
3 R-o-b-e-r-t-s.

4 THE COURT: All right. Good morning, Mr. Roberts,
5 and welcome. Go ahead, Ms. McCollum.

6 DIRECT EXAMINATION

7 BY MS. MCCOLLUM:

8 Q Mr. Roberts, what's your relationship to plaintiff, Ralph
9 Roberts Realty?

10 A I'm broker-owner of Ralph Roberts Realty, LLC.

11 Q Who are Jon Savoy, Arnold Hassig, Adam Hassig, and their
12 companies, Prime Residential Properties, Ryan Residential
13 Properties, Adam Residential Properties, and 1836 Brys?

14 A They're the defendants in this case and investors in my
15 program.

16 Q How did you meet these defendants?

17 A I knew Butch Hassig for a long time and knew his son, but
18 all from Butch for years of different things in Macomb
19 County.

20 Q Tell me about your -- Ralph Roberts Realty's current
21 investor program.

22 A We look for distressed properties being sold at discounts
23 through Wayne, Macomb, and Oakland County, and then we
24 research them and try to find stuff that has a lot of
25 problems with it but buy in first positions, and then we send

1 out an e-mail three different times a week to investors that
2 are in our program. And then if they're interested they'll
3 e-mail back that I'm interested, tell me more information, or
4 I'm going to go drive by it and decide if I want to go
5 forward with it.

6 Q When did you start this current -- I'm sorry. When did
7 Ralph Roberts Realty start this current program?

8 A Came up with the idea on May 19th of 2009 and then
9 started it on June 1st of 2009.

10 Q How did Ralph Roberts Realty start the program on June
11 1st, 2009?

12 A First I called a few investors. I originally called --
13 Butch Hassig and Ray Confer were the first two that I called.
14 At the time, Butch was going through some throat procedure.
15 He wasn't able to actually talk, so we'd text. And when I
16 talked to Ray Confer, Ray -- I told him what I wanted to do.
17 I wanted to buy these properties. I wanted to get a \$5,000
18 acquisition fee when the property was sold. I'd want 50-
19 percent of the upside after the investor got their principal
20 investment back. And he said, "I'll do it," you know, and so
21 we drove around. He drove -- actually, Ray -- when we
22 started, Ray Confer drove around in the truck with me, and
23 ultimately he bought like 35 properties, and so it was really
24 started with Ray as like the first investor and sometime
25 during that was able to meet with Butch. Butch probably was

1 the second or third investor, and he didn't have any funds
2 himself, so he brought in Jon Savoy, who had funds to invest
3 in the program.

4 Q How does Realty identify properties that it sends to its
5 investor list?

6 A We research divorces, bankruptcy, probate, foreclosures,
7 and then scrub that list each week -- there's one day a week
8 that each county is done -- and look for opportunities
9 through lots of research.

10 Q What makes a house a good investment potential for an
11 investor?

12 A Good neighborhood, buying it, you know, 50 percent or
13 less than what its value is, and having, as we say, hair on
14 the dog, having federal tax liens, state tax liens, second
15 mortgages, any kind of additional encumbrances which would
16 make the property harder to redeem for someone else but also
17 make it more likely that we would acquire it as the investor
18 because we put the money up at, you know, the sheriff sale or
19 the clerk sale for the property.

20 Q Normally, having additional encumbrances is not a
21 benefit. Why is it a benefit in a sheriff sale or
22 foreclosure sale situation?

23 A If a house is, say, worth a hundred thousand and you can
24 buy the first mortgage for 50 and it's got a second mortgage
25 for 50, it's got a federal tax lien of 20 and a state tax

1 lien of 5,000, pretty much the only way to acquire that
2 property is to get it at the sheriff sale so you can buy the
3 first lien position. If you get the first lien position,
4 your principal is safe. If they are able to redeem it, you
5 get your money back, but we look for opportunities that have
6 a less likely chance to be redeemed.

7 Q And in that situation, what happens to the other liens on
8 the property after redemption runs?

9 A Second mortgages, third mortgages fall off. Tax --
10 federal tax liens and state tax liens, you have to be careful
11 that they were given proper notice. They have to be given
12 notice 30 days before the sheriff sale, and we check that in
13 advance, so if they were given notice properly, then those
14 would also fall off after the six months and one day have
15 run.

16 Q Do you personally do the research on all these
17 properties?

18 A I personally check the research. There's others.
19 There's one person for each county that does the research for
20 me. Then they present files to me. I then take those files
21 and review every document and verify what's there or have
22 them go check something else, but personally I do audit every
23 file.

24 Q How long have you been involved in the real estate
25 business?

1 A 1975.

2 Q Have you ever missed second liens, tax liens, situation
3 with a property?

4 A Sure.

5 Q How often?

6 A A handful of times in my -- since 1975, but I have for
7 sure. I'm human like everybody else, so I for sure have
8 missed things.

9 Q How many investors are in the program?

10 A Currently there's 50 investors that are active in our
11 program.

12 Q How many houses have been purchased by these investors
13 through the investor program?

14 A Since -- approximately a thousand.

15 Q How many of them are being held by investors right now?

16 A Around 500.

17 Q What happened to the other 500?

18 A Sold or redeemed. You know, either they're redeemed or
19 we've taken them and owned them and then have flipped them.

20 Q Tell me about the investor program itself. What
21 comprises the investor program?

22 A There's really two parts to it. When I originally
23 thought -- started the program, what I thought was going to
24 happen was people were going to flip the properties, so the
25 main thing I was looking for was flipping the properties.

1 And when I was putting a business plan together trying to
2 come up with what to do in my reinventing myself, I looked at
3 selling a \$20,000 house and there being a six-percent
4 commission and couldn't make the budget work with my CPA, Joe
5 Sirianni, so I devised where I needed to get an acquisition
6 fee of \$5,000 when we bought that house for 20. That would
7 be how I'd run the business for cash flow and stuff. And
8 then when the investor sold the property, we would share in
9 50 percent of the upside. And with Ray Confer being one of
10 my first investors, that's the flip side. Ray was one of the
11 first -- was actually the first investor in the new program.
12 He and I had been working together maybe 25 or 30 years. He
13 has over 70 houses. I've helped him buy houses forever. And
14 in the new program, he's got 35, and he's never -- he's never
15 flipped one yet. He's just held them. So with the flip
16 program, if you buy it, all your expenses and different
17 things are added up, and when we sell the property, we take
18 the cost, divide up what's left 50-50. On the rental
19 program, it's -- if the investor decides to rent it for
20 whatever reason, then the costs are not part of the split.
21 The costs then -- I don't take any rent, so if you bought a
22 house for 40,000 and you rented it for a thousand a month for
23 three years, it's 36,000 in rent. You keep all the rent
24 money, but then you also pay taxes, interest, insurance,
25 repairs as the landlord, and then at some point in the future

1 when the property is sold, the split is done off the
2 acquisition cost, not the other cost, just the acquisition
3 cost.

4 Q So the 40 plus what in that hypothetical?

5 A The commissions, closing fees, the transfer tax,
6 things -- normal closing costs but no expenses.

7 Q Is there -- in a rental situation like that, is there --
8 can an investor deduct any expenses at all related to
9 insurance or improvements?

10 A No.

11 Q Even ones they did right prior to renting the property?

12 A No.

13 Q What about the situation where an investor sells a
14 property on land contract?

15 A So we sell a property on land contract. You would
16 just -- you'd buy a house for 24,000, sell it for 84,000, and
17 let's say there's no other commissions or anything. Then you
18 have a \$60,000 profit. Once the investor gets their 24,000
19 back plus their 30,000, then the land contract would be
20 turned over to Ralph Roberts Realty or the 30,000 would be
21 turned over to Ralph Roberts Realty, whichever the investor
22 preferred to do.

23 Q What happens to expenses and taxes and that in a land
24 contract situation?

25 A In a land contract situation, the occupant, the land

1 contract purchaser, is paying the interest. The land
2 contract purchaser is paying the taxes. The land contract
3 purchaser is paying the insurance. So it doesn't have -- it
4 doesn't have those expenses.

5 Q Is a land contract purchaser like a homeowner buying a
6 house on a mortgage?

7 A Yeah. I feel it as -- view it as the same. It's called
8 seller financing. Instead of it being financed by ABC
9 Mortgage Company, it's being financed by an investor in our
10 program.

11 Q Who owns the properties that are purchased through your
12 investor program?

13 A My investors own them individually or they own them in
14 LLC's that they own.

15 Q Does Realty own any of the investor properties?

16 A No.

17 Q Do you consider that Realty has an ownership interest in
18 these properties?

19 A I feel that it really has an upside, you know. It has an
20 interest in the sale side of it. Its business model is to
21 share in the profits of the properties when they're sold, so
22 it does not have an ownership interest, but it has an
23 interest in the future of that asset.

24 Q How do investors find out about Ralph Roberts Realty's
25 investor program?

1 A I made a few calls at the beginning, Butch Hassig and Ray
2 Confer, and then after that everybody has come in from word
3 of mouth. From someone else who's been in the program is how
4 we get -- how we've got everybody.

5 Q Tell me about the difference between the investor program
6 in 2009 versus the investor program today.

7 A In 2009 it was just an idea. It was me and one other
8 person in the office. I basically had four or five
9 investors, but four of them were Butch and Jon's group, and
10 then there was Ray, so I had -- I didn't have -- you know, at
11 the beginning, it was just two investors. Then as time went
12 on, maybe about, you know, a couple weeks later someone else
13 came in or a couple months later, and it just slowly from
14 June 1st of 2009 till January of 2014 is now at 50 investors.
15 It's just slowly added as we've gone along.

16 Q Do you have any kind of investor meetings or investor
17 sessions now?

18 A Yeah. When we first started my -- I would have dinner
19 with Jon and Butch every so often, two times a month, one
20 time a month, sometimes every week for a month, and then
21 later on I switched. I started having an investor meeting on
22 Wednesday nights, and there was Ray Confer and a couple other
23 people. We met. There was maybe four of us met for a year,
24 six months or a year, and then other people started coming to
25 it. And we'd try to teach something at the investor

1 meetings, share an opportunity, share what just happened and
2 let investors know about what we've done and what we're
3 trying to do in the future.

4 Q In 2009, describe how your group of investors -- how
5 Realty told the group of investors about potential property
6 opportunities.

7 A We do it the exact same way. We would still send out an
8 e-mail, but with Jon and Butch, if I would go meet them, we
9 would go to a restaurant like J. Baldwin's is where we met
10 most the time. I would literally take the files there two
11 nights before the sale or the night before the sale and go
12 through the opportunities that were coming up for that week,
13 the documents, all the research, the pictures, and go over
14 it, and also by that time Butch or Jon would have driven by
15 the property and know which ones that they would be
16 interested in, and we'd discuss them that night and make
17 decisions on what we were going to go for or not go for.

18 Q Tell me about the kind of due diligence the investors
19 normally do on properties that they purchase through your
20 program.

21 A We send them out, and all the investors go to the
22 properties themselves. They go to it. It's important that
23 they see it because it's going to be their money. It's going
24 to be in their name or it's going to be in their LLC. It's
25 important that they know what they're getting and that they

1 want to get that property, so I don't believe we've ever
2 bought a property that the investor didn't go by and approve
3 of the sale themself.

4 Q Before the -- before it was purchased at the sheriff
5 sale?

6 A Before the purchase, yeah, before the sheriff sale.

7 Q Do you know what kind of -- what kind of due diligence,
8 if you know, did Jon Savoy and Butch Hassig do on the
9 properties that they bought?

10 A Jon is fortunate. He has a real estate company, so he
11 also has a lot of knowledge of real estate, and he would
12 actually do CMA's and additional research that he would share
13 with us. Jon probably did more research than any other
14 investors we've worked with even up till now. He's got
15 access to stuff that other investors don't have access to.

16 Q Are there any investors that are given the opportunity to
17 look at properties before other investors in your program?

18 A Sometimes it happened. I mean that could happen, but how
19 we do it is at the investor meeting even if you've seen it,
20 we go over the house. We pass the houses out, and then after
21 we pass the houses out, we draw numbers out of a container,
22 so then the high number or low number, whatever we're going,
23 then that's how we determine what order they -- because
24 there's 50 investors now, right, so we want to try to keep it
25 as transparent and as fair as we possibly can. In the

1 beginning, Jon, Butch, Ray, they all got first at the
2 property because they were the only -- it was only them. I
3 mean they were the first people, and there was no one else to
4 see it, but then it grew. Other people came on, and we kept
5 doing it the same way. We sent everybody a blind copy e-
6 mail. Everyone gets the property. We try to get the
7 property to everybody at the exact same time.

8 Q And then what happens?

9 A They reply in. If it's not from the meeting, they reply
10 in from the e-mail, yes, I'm interested, and if -- you know,
11 at first -- and when we first started, Ray doesn't even
12 answer off the e-mail, so his would have to be with telephone
13 calls, but then we went to the e-mail, and then you'd reply
14 in that, yes, I want it, and then you'd go by and look at it
15 and either stay on it or get off of it is kind of what
16 happened at the beginning and still happens to this day.

17 Q Is it common that an investor will go see a property and
18 remove him or herself from the e-mail, from the first choice?

19 A Yes, absolutely.

20 Q Why would that happen?

21 A They didn't like it for some reason or they didn't like
22 the house next door for whatever reason, or they checked with
23 their spouse or their bank and they couldn't get the cash in
24 the next 24 hours, so they -- a lot of different reasons you
25 opt out and a lot of different reasons that you opt in.

1 Q Has Realty ever promised any investor a right of first
2 refusal or a right to be first in picking properties?

3 A No.

4 Q What happened when the investor program expanded beyond
5 Ray Confer and Butch Hassig and Jon Savoy?

6 A And there's been a little bit of conflict with people,
7 you know, on the properties and stuff, but for the most part
8 we've taken people who are like mind and they're not bidding
9 against each other. We're not like -- five people aren't
10 going bidding on the same house. Five people want the house.
11 One gets it. Everyone seems to be happy with that person
12 getting it. Next week, you know, maybe they're first, so
13 it's kind of -- everybody wants everybody to succeed.
14 Sometimes at the meeting they'll say, "I really want to get
15 one over there, that house, because I got one on the next
16 street. It would be easy for me to drive by and check on
17 it." "Okay. You take my spot," so the group is a very
18 friendly group.

19 Q In order to bid, how -- how far in advance does an
20 investor have to give you -- Realty the money?

21 A You could either have the money already in our trust
22 account or you can wire it in the day before or the morning
23 of as long as we get it before ten o'clock or you can bring a
24 cashier's check into the office before the sale or the day
25 before the sale or the morning of the sale or some investors

1 will actually get the cashier's check, the opening bid
2 amount, and come to the -- meet me at the sale and have the
3 checks there to bid right at the sale.

4 Q Do investors ever bid at the sale?

5 A Maybe a -- sometimes, yeah, but most -- 95 percent of the
6 time I'm the one bidding. They might be there with me, but
7 I'm the one -- I'm the one bidding.

8 Q Do you bid in the investors' individual names, or do you
9 bid in a company name?

10 A Their direction. We'll bid -- some have LLC's already
11 set up. Some want to buy them in their own personal name.
12 Whatever their pleasure is with that.

13 Q What happens if an investor buys it in his or her
14 individual name and then wants to form a company to hold it?

15 A Then we would help them transfer. We have to either have
16 their Social Security number or their tax ID number. Now,
17 things over in the last four years has changed a little bit.
18 If we have the money and the e-mail from the investor and
19 what they want to bid and we don't have their information,
20 we'll bid in another one of our company names because the
21 sheriff has to have a Social Security number or a tax ID
22 number that goes along with the purchaser, so sometimes we'll
23 buy it in one of our entities, and then we'll transfer it to
24 the investor's entity.

25 Q Did that ever happen with any of defendants' properties?

1 A I don't believe -- not at the purchase. I believe all
2 the properties that Jon and Butch bought were done in
3 Jon's -- if I remember correctly, I believe they all were
4 done in Jon's individual name --

5 MR. KWIATKOWSKI: Pardon me.

6 THE WITNESS: -- and then at some point Jon would --
7 Jon and his wife would transfer them to the LLC that Jon
8 wanted them to have.

9 MR. KWIATKOWSKI: Excuse me, your Honor. I notice
10 someone else joined the courtroom, and if that's a witness
11 that's going to be called in the case, I would ask for him to
12 be sequestered.

13 MS. MCCOLLUM: That's Mr. Confer, your Honor.

14 THE COURT: All right. Any opposition to that?

15 MS. MCCOLLUM: Your Honor, I have no opposition.

16 THE COURT: All right. I'll order the witnesses
17 sequestered except parties or party representatives. Each
18 party may appear and stay in the courtroom at all times in
19 person or have one representative, the same person at all
20 times. Otherwise witnesses will have to remain outside the
21 courtroom until they testify. Mr. Confer --

22 MR. CONFER: Thank you.

23 THE COURT: -- good morning, and we'll see you a
24 little later on.

25 MR. CONFER: Thank you, your Honor.

1 THE COURT: Yep.

2 BY MS. MCCOLLUM:

3 Q What's Nail Construction, LLC?

4 THE COURT: I'm sorry. What was the name?

5 MS. MCCOLLUM: Nail Construction, LLC.

6 THE COURT: Thank you.

7 THE WITNESS: Nail --

8 MS. MCCOLLUM: Am I close enough to the mike? Are
9 you hearing me okay?

10 THE COURT: Yeah.

11 MS. MCCOLLUM: Okay.

12 THE COURT: I just didn't understand the word you
13 said.

14 MS. MCCOLLUM: Okay.

15 THE COURT: Thank you. Go ahead.

16 THE WITNESS: Nail Construction is one of my LLC's
17 that I own.

18 BY MS. MCCOLLUM:

19 Q Have you ever used Nail to purchase properties at sheriff
20 sale?

21 A I don't believe so. We use Nail Construction like if
22 we're doing cash for keys. We'll have the property deeded to
23 Nail Construction instead of to the investor's LLC.

24 Q Why?

25 A If I had the cash for keys deal done and deed it to the

1 investor and that party had second mortgages, tax liens, or
2 other encumbrances on the property, my investor would now be
3 responsible for that additional cost, so by deeding it to
4 Nail Construction, when my investor's deed expires in six
5 months and one day, Nail Construction's interest is wiped
6 out.

7 Q And when you're talking about the investor's deed, are
8 you talking about the sheriff's deed?

9 A Yes. That's correct.

10 Q And then what happens after the investor sheriff's deed
11 expires?

12 A They then would have perfected title. They would have
13 clear title to the property in their name.

14 Q That they can then transfer to whomever they wish?

15 A Correct.

16 Q You previously talked about the \$5,000 acquisition fee.
17 What does this fee cover in terms of Realty's expenses,
18 overhead, profit, that sort of thing?

19 A Basically the acquisition -- our acquisition fees and the
20 commissions we get from transactions cover all of our
21 overhead. Pretty much from our acquisition fees and
22 commissions, the company basically breaks even paying all,
23 you know, rents and payroll and commissions and all the stuff
24 that come with running a business.

25 Q Is it possible for Ralph Roberts Realty to make a profit

1 if it just got its acquisition fee?

2 A No.

3 Q If it just got acquisition fee and commission?

4 A No.

5 Q Is the profit dependent on the investor split?

6 A Yes. Our profits all come -- pretty much we're a break-
7 even company, and you add the profit splits is where the
8 profits come from for Ralph Roberts Realty.

9 Q Does Ralph Roberts Realty do any rental management for
10 its investors?

11 A Yes.

12 Q Did Ralph Roberts Realty manage any of Jon Savoy or Butch
13 Hassig -- any of the defendants' properties?

14 A No.

15 Q They rented them themselves if they rented them?

16 A I believe they rented them. I'm not sure who rented
17 them, but --

18 Q Are the terms of the investor program the same for all
19 investors or do they differ?

20 A They're currently the same for all investors.

21 Q And what are those current terms?

22 A A \$5,000 acquisition fee and 50 percent of the upside
23 when it's split. If it's a rental property, we do not share
24 in the rental cash flow, and we also do not share in the
25 expenses as far as calculating profit. If it's a flip

1 property, \$5,000 acquisition fee, and then all the cost
2 within reason -- we get the cost in advance before a closing
3 and tell them what's allowed, what's not allowed and
4 different things, but approved costs are then added to the
5 cost that the property -- there's a 50-50 split.

6 Q Did defendants have different terms than what you just
7 described?

8 A They did.

9 Q Why?

10 A They were like the second investor in my program, and
11 when I got to Butch about my program, I didn't know that he
12 didn't have any funds, and he wanted to bring Jon in, who
13 told me he had unlimited funds. And I didn't have anybody
14 else, so they wanted to go a third, a third, a third, and
15 they wanted to get a \$5,000 fee that the two of them would
16 split on the sale of each property. It ultimately turned out
17 to be 30 percent on our side and 70 percent on their side,
18 and they got a \$5,000 fee. No one else has got that deal,
19 and no one else would ever get that deal now that I have
20 other investors.

21 Q How long is the redemption period in Michigan?

22 A It's three different redemptions in Michigan. The main
23 one is six months, 180 days, but there could be a 30-day
24 abandoned -- if it's an abandoned property, it could be --
25 the redemption could be 30 days. And since we started, the

1 law has changed a little bit about farmland and stuff, but if
2 it's a farmland, it could -- and it's actually farmed, there
3 could be up to a 12-month redemption.

4 Q Is there any situation where a -- sort of a normal
5 homeowner would get a 12-month redemption period?

6 A There was before if the house was like 35-percent paid --
7 principal paid down from original principal balance, but I
8 don't believe that one exists anymore. It's now property
9 that's farmed.

10 Q Who makes the sale decisions about investor properties,
11 properties purchased through the investor program?

12 A Which sale? When we flip? When they're flipped?

13 Q Any sale decision.

14 A The investor makes that decision.

15 Q Does Realty have any say in that decision?

16 A Most of the time. They would for sure consult with us in
17 what to do, what repairs to do, you know, will this increase
18 the value or not increase the value, should we rent it
19 till -- you know, till we can -- is it going to improve
20 valuwisewise, yeah, so we try to kind of coach and consult on
21 those decisions, but at the end of the day it's the
22 investor's money. It's their LLC. They get to make the
23 decision when it's sold.

24 Q Do you ever disagree with investors' sale decisions, you
25 personally or the company?

1 A Yes, I do, absolutely. That's why we're here. I
2 disagree with this investor's situations.

3 Q On the thousand properties purchased through your program
4 by investors, have there ever been -- has there ever been an
5 investor loss?

6 A You had me check that last -- you know, through last
7 year, and till -- through December 31st of 2013, there has
8 not been a loss.

9 Q Other than that asserted by defendants?

10 A Correct. I mean they say there's a loss. I don't
11 even -- I don't believe there's losses, but there's not been
12 a loss, no.

13 Q Have you ever testified about investor losses in your
14 bankruptcy case?

15 A Yes, I have.

16 Q Can you tell me when that was and in what context?

17 A In the Roger Roberts case, I testified about investor
18 losses.

19 Q What did you say?

20 A That Realty shares in the upside, whatever percentages,
21 and that if there was a downside, Realty would share in the
22 downside, according to their percentage.

23 Q What do you mean by downside?

24 A If there was a loss on a property, if they lost some of
25 the principal. The goal is -- the most important thing when

1 people invest in something different is that they -- we have
2 to protect the principal. A lot of the people that are
3 investing with me did real estate different ways before, but
4 some also have joined us who never did anything in real
5 estate other than maybe a home or two for themselves, so the
6 most important thing is, you know, to protect the principal,
7 so do everything we can to put that principal to work at the
8 most profitable opportunity it can possibly have.

9 Q Did you sign an affidavit in this adversary proceeding?

10 A Yes.

11 Q Did you sign it in connection with the summary judgment
12 motion?

13 A I did, yes.

14 Q Did you make any statements in that affidavit about loss
15 sharing?

16 A I did.

17 Q Do you remember what those statements were?

18 A Not exactly but with Butch and Jon being the first
19 investors, losses were never talked about, and the way they
20 were getting properties and how the money -- there was not a
21 chance that they could lose, so I would say there would be
22 no -- there would be no loss. Couldn't be a loss with the
23 way we were doing it.

24 Q Has any investor ever come to you and said that they've
25 lost principal?

1 A No.

2 Q How many -- approximately how many property split payoffs
3 has Realty received?

4 A North of a hundred. I don't know the exact number, but
5 north of a hundred.

6 Q As part of your bankruptcy, you started entering into
7 written contracts with your investors. Tell me about how
8 those contracts work.

9 A I think, if I understand the question properly, they work
10 just how I explained the program. It just puts more of it in
11 writing of how the program is going to -- how the program is
12 going to work, how the money is going to be shared in the
13 program.

14 Q Before your bankruptcy, did you have written contracts
15 with any of your investors?

16 A I did not.

17 Q Why?

18 A I knew everyone I was doing it with. I knew them and
19 figured I could trust them all and why would they not live up
20 to their agreement because if they didn't live up to their
21 agreement, they wouldn't get any more opportunities, so just
22 trusted them and was so busy trying to stay in business, stay
23 alive, support my family that the most important was the next
24 deal, the next acquisition fee. It wasn't the next signed
25 agreement. Plus I only had a -- you know, a handful at first

1 when I started.

2 Q Do your investors have one overarching contract with
3 you -- with Ralph Roberts Realty, or do they have a separate
4 contract for each house?

5 A Some have just one. Recently we did an agreement with a
6 group that's -- signed agreement for all of them. Some have
7 each house, and there's still a whole bunch that don't have
8 any agreements because it just hasn't got there yet. It's
9 just -- so there's -- obviously you've helped us with that.
10 There's a lot of work to get that all done.

11 Q In general, how does Realty treat each house, separately
12 or together?

13 A Every house is a separate project. Every house is, you
14 know, a separate transaction. If someone has got 30 houses
15 with us, it's 30 different projects. It's not one project
16 with 30 houses in it.

17 Q Do you explain the terms of your investor program to all
18 potential investors?

19 A Yes.

20 Q Did you explain these terms to Jon Savoy and Arnold
21 Hassig and the defendants?

22 A Absolutely, yes.

23 Q When did you explain those terms?

24 A Multiple times. I mean, as I told you, being one of the
25 first, I had, you know, lunches with them, dinners with them,

1 going over on a regular basis. We'd have meetings where we'd
2 have -- either at my office or Butch's house where we would
3 go over the whole portfolio of all the different properties
4 in all the different LLC's that they had and make decisions
5 on what's going to happen next on different properties.

6 Q Did you ever talk about set-off with them?

7 A Absolutely not, no.

8 Q Do you know what set-off is?

9 A I do.

10 Q Can you explain it?

11 A Set-off is where you have something that created a loss
12 and you would set it off against something else.

13 Q Why wouldn't -- why didn't you talk about set-offs with
14 defendants?

15 A With my research and with their knowledge in real estate
16 and construction, there'd be no chance that we could actually
17 have a loss.

18 Q Do you know if Arnold Hassig and Jon Savoy are partners?

19 A I know they're friends, and obviously they're partners in
20 the stuff that I did with them. I'm not -- is that -- I
21 don't know. Did I answer that or not?

22 Q I'm sorry. The question wasn't clear. I meant do you
23 know if they're business partners in the houses that they
24 purchased through your program?

25 A Yes, they are.

1 Q Do you know how many properties they purchased?

2 A I helped them with 17 properties, 16 in this group, and
3 then I helped Adam get a house for himself.

4 Q How did defendants pay their acquisition fee to Ralph
5 Roberts Realty?

6 A Two different ways. Sometimes Jon would write a check
7 for the acquisition fee, and then later on he set up a
8 program with, I think, Ann Arbor State Bank where we filled
9 out information, and he would direct the bank to cut us
10 checks or maybe they wired it to us, but those are the two
11 different ways we got money from Jon Savoy's group.

12 Q Did the defendants pay their \$5,000 acquisition fee all
13 at once or in installments?

14 A They had a different arrangement than our current
15 program. They would pay 2,500 at the time we purchased it at
16 sheriff sale, and then they would pay the other 2,500 of the
17 5,000 when we acquired title.

18 Q Why did you set up that separate arrangement with them?

19 A I didn't have anyone else to sell the properties to at
20 the beginning, so I had to take what I could get and adjusted
21 it to make it work for them as I was trying to acquire other
22 investors and find other opportunities.

23 Q Other than the 30-percent split and the \$5,000 seller's
24 fee, was there any difference in defendant's program from the
25 rest of the Ralph Roberts Realty's investors?

1 A With them being a -- at first it was just them looking at
2 stuff, so if they didn't buy it, I didn't get a chance to go
3 get the deal done, so at first they were the only ones
4 looking at it, so that pay -- how they paid the acquisition
5 fee, 30-percent split, and then they also negotiated that
6 since I was getting the 5,000 acquisition fee, Butch and Jon
7 would get 5,000 that they would share, which was different
8 than everybody else. And then there was one other thing.
9 Jon owns Lee & Associates in Southfield, and he's got Kelly
10 Savoy that works for him. And we agreed to give her \$500 on
11 each closing, and we -- I agreed -- you know, it's one of the
12 things they wanted to do, and then I agreed to do that also
13 because it would cost me, you know, a third.

14 Q Who's Kelly Savoy?

15 A She works for Jon. I believe it's his sister-in-law, who
16 works at Lee & Associates.

17 Q Did defendants -- were they entitled to any interest?

18 A On a property -- yeah. They were entitled to -- we
19 negotiated that they would get their interest on the
20 properties that were flipped. It would be part of the cost.
21 So Jon -- because Jon was putting the money up. I believe
22 the interest ultimately went to Jon because Jon was the one
23 loaning the money to the LLC's, possibly Jon and his wife at
24 the beginning, and then later on I believe just Jon.

25 Q What was the time period they got interest on?

1 A Well, they'd get -- if it was a property going to be
2 flipped, they would get interest from the time they put the
3 money up until the property was flipped. That would be one
4 of the expenses that would be approved to be -- for the
5 allocation of how you split the profits. If it was property
6 they were going to -- was sold on land contract, they
7 wouldn't get the interest because the interest was being paid
8 to them by the land contract purchaser or if they were
9 renting the property, there wouldn't be an interest because
10 they're getting the rental income, which will create --
11 instead of the interest.

12 Q Did you explain this to defendants?

13 A Yeah. Absolutely, yes.

14 Q Were there any conditions on the \$5,000 seller's fee as
15 to when defendants could get it and when they couldn't?

16 A No. When they sold the property, they were going to get
17 the \$5,000 fee on every property.

18 Q Was it an expense? Did they actually spend 5,000 on each
19 property?

20 A It's an -- it's more of an accounting question. It for
21 sure was a cost to the property, you know, income to the two
22 of them.

23 Q Do you know if defendants filed claims in your -- in
24 Realty's bankruptcy case?

25 A I know that they did not file any claims in my

1 bankruptcy.

2 Q Did they object to the fifth amended combined plan of
3 reorganization and disclosure statement?

4 A They didn't object to my plan at all, no.

5 Q Did they show up at confirmation?

6 A They did not.

7 Q Tell me about the properties that were redeemed before
8 defendants could perfect title.

9 A I don't know if I could tell them from memory. Is
10 there -- but --

11 Q If I said the names Breckenridge, Palm Beach, and
12 Ursuline, would that help?

13 A Yes. Those properties we bought at sheriff sale.
14 Breckenridge was a condo lien, and it ultimately got
15 redeemed. Ursuline also was a mortgage foreclosure that got
16 redeemed. Palm Beach was a property that also got redeemed.
17 Those three were redeemed, and the acquisition fees were
18 credited back on those properties.

19 Q Did defendants receive interest when they were -- when
20 the properties were redeemed?

21 A They would get whatever their interest was on the note at
22 the time, so they would get -- when they got the sheriff sale
23 payoff, they would get their principal back plus any taxes
24 that they paid, insurance that they paid, and any interest
25 that was due on that, so they would get all their money back,

1 a hundred percent of what they paid, plus interest, and then
2 they would get -- we would credit them back the acquisition
3 fees.

4 Q Turn to Exhibit 1 in the plaintiff's book.

5 A There's two books. There's one here and --

6 Q The one with the red cover.

7 A Red cover? Okay.

8 Q Yeah. And that would be --

9 MS. MCCOLLUM: Your Honor, that would be the one
10 that actually says Exhibit 1, Exhibit 2, Exhibit 3 and the
11 tabs.

12 THE WITNESS: Okay. I'm there. I got it. What tab
13 do you want me to go to?

14 BY MS. MCCOLLUM:

15 Q Tab 1, please.

16 A Okay. Okay.

17 Q What is this document?

18 A This is a calculation worksheet for Eastland property.

19 Q Did you prepare it?

20 A I did not.

21 Q Did defendants prepare it, if you know?

22 A Yes, they did.

23 Q Tell me about Eastland.

24 A Eastland was a property that we bought at sheriff sale,
25 and John Selby, an agent who works for me, was able to go

1 there and did a cash for keys on this property, and the
2 people signed the property over to Nail Construction. Later
3 on during some -- a short period of time, they -- either
4 their family was going to loan them money or they found a way
5 to come up with money on their own, and they wanted to undo
6 the situation. And ultimately they retained an attorney and
7 filed a lawsuit to undo the transaction that was done. I
8 believe that we gave them a lease option or a rental
9 agreement, some sort of home saver program that at the time
10 they agreed to. Later on they didn't think they got a good
11 deal. So ultimately what happened is this property was sold
12 back to the owners, and everybody was made whole. And it
13 was -- the lawsuit was even settled in Macomb County Circuit
14 Court, so I don't know why there's a calculation worksheet
15 that shows a \$14,000 loss and a fee going to Butch and Jon of
16 10, which makes up part of that 14, when there wasn't -- this
17 was a transaction that was undone, approved by all of us and
18 filed in Macomb County Circuit Court.

19 Q Can you turn to Exhibit 15, and the second page, which is
20 labeled at the bottom 15-2?

21 A Okay.

22 Q The fourth paragraph down, does that --

23 A Wait. I'm sorry. I got Exhibit 15, Number 2, written on
24 it, but --

25 Q No. The second page of Exhibit 15. I'm sorry.

1 A Oh, I got it. Okay. Sorry about that.

2 Q Fourth paragraph down. Does that talk about Eastland?

3 A Yes, it does.

4 Q Do you think defendants agreed to the settlement that you
5 just described?

6 MR. KWIATKOWSKI: Objection. Mr. Roberts doesn't
7 know what the defendants are thinking.

8 THE COURT: That's overruled. Go on.

9 THE WITNESS: They did for sure because it was
10 settled in court, and they filed a settlement with the
11 Circuit Court in Macomb County.

12 BY MS. MCCOLLUM:

13 Q Was the lawsuit dismissed?

14 A Yes, it was.

15 Q Are defendants owed anything on this property?

16 A No, they are not.

17 Q Was there any loss?

18 A Absolutely not.

19 Q Please turn to Plaintiff's Exhibit 2.

20 A 2. Okay.

21 Q And this is the same face page as Defendant's Exhibit I.
22 Tell me what this document is.

23 A This is a calculation worksheet for Raymond, 31805
24 Raymond in Warren.

25 Q Did Ralph Roberts Realty prepare this?

1 A No, we did not.

2 Q Tell me about the Raymond transaction.

3 A Raymond was a condo that we bought at 14 and Hoover.
4 Title ultimately became perfected in Adam Residential
5 Property's name. And upon viewing the property, Kelly had a
6 friend, I believe, that ultimately made an offer to buy it,
7 so see how Kelly gets a closing fee of 500? That's on every
8 property. But she also got a commission on this because she
9 was the one that found the buyer. And since this was a flip,
10 like the interest and the insurance would be part of the
11 cost, and this closed, and Jon, Butch, and the group paid us
12 as agreed.

13 Q Is this a typical -- what you would consider a typical
14 transaction for a flip?

15 A How it was calculated is typical, but every price is
16 different in every different house, but this is typical for
17 Jon and Butch, but it's not typical for anyone else because
18 no one else got the fee. No one else -- the \$5,000 fee. No
19 one else got a closing fee to one of their employees. No one
20 else would get interest on the money that they invested.

21 Q If you turn to Exhibit 2, is this -- what is this? I'm
22 sorry. Exhibit 2, second page.

23 A That's the closing statement, revised closing statement
24 for this property.

25 Q Is this the sort of document that the investor would

1 normally get at a closing where there'd be a split?

2 A Yes.

3 Q How would the split normally be calculated? On this or
4 on the HUD or on some other document?

5 A It's usually put on the closing statement. This is a
6 cash deal, cash transaction. There's no HUD. But if it's a
7 mortgage deal, it's put on the HUD. But you see the equity
8 disbursement was paid. It's on here, the \$5,700.

9 Q Please turn to Plaintiff's Exhibit 3.

10 A Okay.

11 Q What is this document?

12 A This is a calculation worksheet for 2630 Antonio --
13 Antonia in Warren, and this we actually -- from knocking on
14 the door, we ultimately sold this house to the owner, who
15 lost his brother, so the family could save the family house,
16 and this was the -- this was the -- this is the calculation
17 of how -- what the profit was on this transaction.

18 Q There are more expense lines on this one than there were
19 on the Raymond. Why is that?

20 A You know, I didn't see this before this litigation. I
21 don't know why. If I would have seen it, I would have -- on
22 this particular one, I think everything is fine except for
23 accounting fees, license fees, office supplies. I have no
24 idea why that would be put on a calculation worksheet for a
25 property.

1 Q Have you ever -- has Realty ever paid office supplies for
2 any other investors?

3 A No.

4 Q Do you know if Antonia was rented, or was it a flip?

5 A It was a flip.

6 Q Please turn to Exhibit 4. What is this document?

7 A This is the calculation worksheet for 38944 Lowell Court
8 in Sterling Heights.

9 Q Tell me about this, about the 38944 Lowell Court
10 transaction.

11 A This party -- we tried working something out with the
12 lady in the home, and ultimately we didn't. She ultimately
13 left the property. We listed it for sale, and we flipped
14 this property.

15 Q Do you know if anybody had to sue the homeowner or the
16 resident to evict?

17 A No.

18 Q You don't know, or they didn't have to sue?

19 A It did not, did not happen, no.

20 Q Do you know why there's legal fees on this calculation
21 worksheet?

22 A I didn't see this before, but if I would have, I would
23 have objected to accounting fees, office supply, legal,
24 license. I would have objected to those because they're
25 just -- they're not part of this transaction.

1 Q But you were paid -- but you or Kathleen Roberts, your
2 wife, was paid the 11,102.38 that's reflected on here?

3 A That's correct, yes.

4 Q Was this a flip?

5 A Yes, it was.

6 Q Even though it was held for 285 days?

7 A Yeah. The person was -- I think this was a little
8 different. I think we let her stay there for a little period
9 of time, and in exchange we got the property in good repair,
10 so it was 180 days for the redemption, and then there was a
11 little bit more time where she -- we worked with her. I kind
12 of think it was like -- we gave her a few months, and then we
13 put it on the market, took time to sell it, took time to
14 close, so that's why there's 285 days of interest in. Per
15 our agreement, they would be entitled to the interest on this
16 because it was a flip.

17 Q What about the repairs and maintenance?

18 A If they actually did the repairs and maintenance, they
19 would be entitled to it. I do not -- and I do not know what
20 that's for. I don't know what -- I was at this house. I
21 don't know what repair it could have possibly needed. It was
22 just in great condition.

23 Q Did you dispute this at the time?

24 A I never -- I didn't see this. I just assumed when I was
25 told my number was 11 -- the number was 11,000 something that

1 that was correct and didn't -- I didn't say anything about
2 it.

3 Q Was this early? Did you get -- did Ralph Roberts Realty
4 get this split early in the investor program?

5 A Yeah. This came in -- these were -- Jon and Butch's
6 properties were the first ones. I mean there was like -- it
7 was actually -- maybe Realty didn't even have a checking
8 account, everything was so new, so, yes, it was early on.

9 Q Please turn to Exhibit 5. Is the first page the same
10 profit calculation worksheet similar to the other ones?

11 A Yes, it is.

12 Q What property is this for?

13 A 50335 Foxcrest.

14 Q Tell me about this property transaction.

15 A This was a property bought at sheriff sale. It was also
16 probate. We paid the estate some money for cash for keys,
17 and then Butch rehabbed this property, and then this property
18 was sold.

19 Q It says it was held for 175 days. That's less than 180,
20 which is the redemption. What can you tell me about that?

21 A What happened is we got the estate to take money and sign
22 off early, so we got possession of it sooner, so we got the
23 property, say, within the first 60 days. So we owned it
24 then -- or not we, the -- Jon and Butch's company owned it
25 then, so we were able to start the repairs on this one. This

1 one needed work, and we got -- the work got done. We got it
2 on the market, and we sold the property.

3 Q Do you remember what cost 38,000 -- nearly \$39,000?

4 A I don't.

5 Q Did you dispute this at the time?

6 A I did not, no.

7 Q Were you paid everything you were owed on this property?

8 A If the 38,000 was the correct number and this made
9 10,000, then, yes, we -- Kathleen received the check for the
10 3,000-something, yes.

11 Q Were you paid everything you were owed on Antonia and
12 Raymond as well?

13 A Yes, I was.

14 Q Assuming that these calculations are correct.

15 A Yes.

16 Q Okay. Turn to Exhibit 6. What is this document?

17 A This is from Ralph Roberts Realty, open invoices that are
18 owed by Jon Savoy and Jon Savoy's group, and the -- this is
19 acquisition fees except for two numbers. If you look at the
20 top number, cash for keys, Jimmy Court, Jon and Butch
21 approved for us to pay the lady a thousand dollars to get her
22 to sign off the house. They told me to cover it, and they
23 would reimburse me. I covered it, and to this day I've not
24 been reimbursed for that thousand. And then if you go to the
25 second one on Adams Residential Property for Raymond, you'll

1 see I paid \$906.80 for some tax that -- I was asked if I
2 could pay it, cover that, and they would -- I would get
3 reimbursed. The other 15,000 on here is unpaid acquisition
4 fees or unpaid second half of acquisition fees.

5 Q And the documents behind that, what are they?

6 A That's all the back-up documents showing credits and
7 debits on the properties to show what brings it to these
8 totals. That's the detail on each one of these accounts.

9 Q Have defendants ever provided you a different accounting
10 of the acquisition fees owed?

11 A They have not, no.

12 Q Have they ever provided you any back-up for their
13 position that they don't owe you any acquisition fees?

14 A They have not provided it to me.

15 Q Turn to Exhibit 7. I'm sorry. Let me ask you a question
16 before that.

17 A Okay.

18 Q All the properties we discussed up until now were either
19 paid or redeemed, and you don't believe you're owed anything;
20 correct?

21 A They were paid, redeemed, or settled because Eastland was
22 a little different. And I mean I've been paid. I agree that
23 I've been paid in full and those are all settled, yes.

24 Q Other than the acquisition fees and the taxes?

25 A That's correct.

1 Q What happened between those properties and the next set
2 of properties where defendants sold them and didn't pay
3 anything?

4 A You mean what I think happened or -- I mean I don't --

5 Q From Realty's perspective, what happened? What do you
6 know happened?

7 A Nothing happened on Realty's side. Something happened on
8 Jon and Butch's side. Something happened with them.

9 Q How did you find out that something happened?

10 A Because Jon wanted to use a different broker, wouldn't
11 return calls, wanted to hire someone else, thought someone
12 else could do it better, and even though we had had a great
13 track record, he decided to try to do something -- do it
14 different, so as the investor and the owner of the
15 properties, you know, that was his -- that was his choice.
16 We undid listings. He hired another broker. He promised
17 that he would send the stuff in advance so we could go over
18 what the numbers were, told me I would be paid at closing
19 just like the other properties. Then he -- then it went
20 complete dark, silence, no return phone calls, wouldn't talk
21 about it, and it -- you know, the communication between our
22 groups broke down to zero.

23 Q Do you know what happened to cause that?

24 A At some point they decided to open up a flea market out
25 on Groesbeck and Frazho, and they said they were going to use

1 money there, and then they were going to be able to buy a
2 couple a month from me if they could get this place going,
3 and it would create great cash flow. Ultimately, it closed.
4 Jon went through a terrible divorce and had to ultimately pay
5 his wife a million dollars over five- or six- or seven-year
6 period of time, so those two things happening at the same
7 time caused them to want to use money for other things
8 instead of paying Ralph Roberts Realty.

9 Q Turn to Exhibit 7. Is this another one of the profit
10 calculation worksheets that defendants came up with?

11 A Yes. This is a calculation worksheet for 36403
12 Ledgestone.

13 Q Had you ever seen this before this litigation started?

14 A I have not, no.

15 Q Tell me about this property.

16 A This is the property that they -- when they took this
17 property -- got the possession of this property, they rented
18 this. This was a rental property, so this went into their --
19 into rental for Jon and Butch, and that's what I know about
20 this particular property.

21 Q Was this a flip? No. I'm sorry. You just testified
22 this was rental.

23 A It was a rental.

24 Q Strike that.

25 A Yeah.

1 Q Strike that. Tell me about this -- the expense items
2 here.

3 A If I would have seen this in advance, there shouldn't be
4 insurance. There shouldn't be interest. There shouldn't be
5 legal. There shouldn't be office supplies. There shouldn't
6 be professional fees. There shouldn't be repairs and
7 maintenance; shouldn't be service charges. There shouldn't
8 be property tax. There shouldn't be utilities. There should
9 be title, should be Kelly, and there shouldn't be bad debt
10 either. And there shouldn't be -- I don't know what the fee
11 was for Jon and Butch on this one. You can't read it.

12 Q If you take this other book, Defendant's Exhibit J --

13 A Okay.

14 Q -- is the same as this calculation worksheet, and I -- is
15 clearer.

16 A Oh, okay. So it's 10,000. That should be -- that should
17 be 5,000, not 10,000.

18 Q Where did they get ten from?

19 A Well, I think in this litigation they said at some point
20 they decided to raise their fee from five to ten, so
21 that's -- they decided to do something outside of our
22 agreement.

23 Q Did they ever ask you about that?

24 A No.

25 Q Did you ever agree to ten rather than five?

1 A No.

2 Q If you turn to Defendant's Exhibit P, 5 of 5.

3 A I'm not sure what defendant or -- is there -- because
4 this says plaintiff, and --

5 Q Yeah. These are them. This is P-1 --

6 A Okay.

7 Q -- 2, 3, 4 -- this one, 5.

8 A Okay.

9 Q And this isn't subnumbered or anything, so you're going
10 to have to bear with me as I flip through it. The third page
11 in --

12 A Okay.

13 Q Have you ever paid any of your other investors for
14 preparing their own income tax returns --

15 A No.

16 Q -- as an expense on a transaction?

17 A No. It's not part of our program.

18 Q If you go to the sub-tab that says "Insurance" -- was
19 this property rented?

20 A Yes. We're talking about Ledgestone; right?

21 Q Yes, Ledgestone.

22 A Yeah, yeah. Ledgestone was a rental property, yes.

23 Q That was acquired, according to this document, on 12-14,
24 2009. I'm sorry. Defendant's Exhibit J, our Exhibit 7, says
25 acquisition date, 12-14, 2009. Do you have any reason to

1 argue that that was the acquisition date?

2 A That's not correct because if you go to the next page, if
3 this is the sheriff deed, it was acquired on 12-11, 2009 --

4 Q Okay.

5 A -- not 12-14.

6 Q If you go back to Defendant's Exhibit P, part 5, and you
7 go to the insurance sub-tab, if the property was acquired on
8 12-11, 2009, when would redemption run?

9 A Six of 2010, June of 2010.

10 Q Do you know when defendants rented this property?

11 A Right around the time -- it was vacant, so they would
12 have rented it right away.

13 Q After redemption expired?

14 A Correct.

15 Q Why are they charging you for interest significantly
16 after the redemption period?

17 A I don't -- I have no idea.

18 Q How would that normally be treated by your investor
19 program?

20 A Because the rental property, all the expenses, insurance,
21 maintenance, taxes, insurance -- insurance, are paid by the
22 landlord, not by -- not by the property.

23 Q Except for insurance during the redemption period?

24 A Correct. The insurance for the redemption period would
25 be a cost of the property; correct.

1 Q Okay. So if you turn to the insurance sub-tab -- I'm
2 sorry -- the interest sub-tab --

3 A What page is that one?

4 Q There's no page numbers. I don't know.

5 A No. I know.

6 Q It says 63400 interest.

7 A And it's in this group?

8 Q It's in this group, yeah.

9 A Oh, it's got a tab.

10 Q Yeah, it's got a handwritten tab.

11 A Okay. Oh, there it is. Okay. Got it.

12 Q Is any of this --

13 THE COURT: I'm sorry. Where are you in this? It's
14 page 5 of 5 of Exhibit -- 5 of 5 of Exhibit P, but where in
15 there are we?

16 MS. MCCOLLUM: There's a sub-tab 63400 interest. If
17 yours is tabbed on the side, it's a handwritten tab that says
18 "interest."

19 THE COURT: Hold on. Okay. I believe I see the
20 page you're referring to. Thank you. Go ahead.

21 BY MS. MCCOLLUM:

22 Q Is any of this interest payable to defendants under your
23 investor program?

24 A Looks like they paid some Ryan person. I don't know what
25 that means.

1 Q If you turn to the next page, does that help you at all?

2 A No. I've never -- I've never heard that name before.

3 Q If you turn to the tab that says "legal," do you know who
4 Marc D. Landau is?

5 A I do.

6 Q Who is he?

7 A He's a landlord lawyer. He does landlord-tenant stuff.

8 Q So if you turn not to the --

9 A But I can't find -- I don't -- I still have not found
10 that page.

11 Q There's a sub-tab that says "legal." There's a tab on
12 the side that says "legal."

13 THE COURT: Is that before or after the interest
14 one?

15 MS. MCCOLLUM: That is after the interest one.

16 THE WITNESS: Office supplies, professional fees.

17 MS. MCCOLLUM: There's one that specifically says
18 "legal."

19 MR. KWIATKOWSKI: It's the next page after the
20 "interest."

21 MS. MCCOLLUM: The next page after the "interest."

22 THE WITNESS: Okay.

23 MS. MCCOLLUM: Oh, it's not tabbed. Okay. Sorry,
24 it was not tabbed on the witness copy. It says "Legal, Marc
25 Landau."

1 BY MS. MCCOLLUM:

2 Q If you turn to not the page --

3 THE COURT: Hold on. All right. I believe I see
4 the page you're referring to. Thank you.

5 BY MS. MCCOLLUM:

6 Q Not the page after that but the page after that --

7 A Okay.

8 Q -- what's this document?

9 A It looks -- oh, this is not -- I'm sorry. This is a bill
10 from Marc Landau for filing a complaint against Michelle
11 Welker, and total charge is \$316.

12 Q Do you know if she was the tenant in this property?

13 A I do not know that, but I'm assuming so from what this
14 says, but I don't have firsthand knowledge of that.

15 Q If an investor had to evict a tenant, would that investor
16 normally be able to charge against the profit split for
17 that -- the legal fees that that cost?

18 A No.

19 Q There's a separate tab here if you go about three tabs
20 further for professional fees.

21 A Professional -- professional fees.

22 Q It's a couple of tabs further.

23 A Has it got a tab?

24 Q Yeah, it does have a tab.

25 A Okay. Professional fees.

1 Q Who's Swad & Company?

2 A I do not know.

3 Q If you flip two pages down or two pages further, what
4 does that document say Swad & Company did for the defendants?

5 A There's different invoices here. It looks like there's
6 two. They did month financial -- I mean March's accounting,
7 1099's, 1096's, annual report, sales tax reports, and then
8 the next one is for \$1,267.50. It was for services from
9 February of 2011, partnership income and Michigan business
10 tax returns for the LLC.

11 Q Has Realty ever paid these kinds of fees for any of its
12 other investors?

13 A No.

14 Q Did you ever agree -- did Realty ever agree to pay those
15 fees for defendants?

16 A No.

17 Q Do you know why they're including them in these -- in
18 this list of expenses?

19 A Trying to manipulate the numbers to show losses.

20 Q Can you turn -- one more tab down is the repairs and
21 maintenance tab.

22 A Okay.

23 Q If redemption expired in June of 2010, wasn't the
24 property rented after that?

25 A Yes.

1 Q Are any of these expenses -- these repairs and
2 maintenance expenses, are any of those, I guess, compensable
3 as an expense under your program?

4 A No, because if it was a flip, they would have been, but
5 not as a rent -- not a rental property.

6 Q So defendants are renting it and paying somebody to
7 maintain the lawn. Realty -- does Realty pay for that?

8 A No.

9 Q Has Realty ever paid for any of that?

10 A Not on a rental, no.

11 Q Would it pay if defendants needed to mow the lawn on a
12 property they were going to flip?

13 A Yes.

14 Q I think about 25 pages later, if I've counted
15 correctly --

16 A Twenty-five pages later?

17 Q Yeah. There's no -- I'm sorry. There's no subnumbers.
18 It's an invoice from Hassig & Sons to Ryan, LLC, for \$839 of
19 labor.

20 A Oh, I'm sorry.

21 THE COURT: Do you really want me to count 25 pages,
22 or do you have a better way?

23 MS. MCCOLLUM: No. I will just ask.

24 THE COURT: Do you have a better way for me to find
25 this thing?

1 MS. MCCOLLUM: Hang on. Let me see if it's better.

2 THE WITNESS: Okay. I found it.

3 MS. MCCOLLUM: It's six pages from the next tab, so
4 if you go to the next tab and you count six pages back --

5 BY MS. MCCOLLUM:

6 Q Did you find it?

7 A Yes, I did.

8 THE COURT: All right. Hold on. The next tab being
9 what?

10 MS. MCCOLLUM: The next tab is --

11 THE COURT: Service charges?

12 MS. MCCOLLUM: Yes.

13 THE COURT: And it's six after that, you say?

14 MS. MCCOLLUM: Six back.

15 THE WITNESS: Six before that.

16 THE COURT: Before that.

17 MS. MCCOLLUM: Yes, six before that.

18 BY MS. MCCOLLUM:

19 Q Who is this invoice from?

20 A It's from Butch Hassig's to -- yeah. It's from Butch
21 Hassig's company.

22 Q Does this say -- is this the kind of document that you
23 would ask an investor to provide to you if they wanted to be
24 reimbursed for something?

25 THE COURT: I'm sorry. Describe the page. I'm not

1 finding it.

2 MS. MCCOLLUM: It is a invoice from Hassig & Sons to
3 Ryan, LLC, for the amount of \$839. It looks like this.

4 THE COURT: Okay. I see it. Thank you.

5 MS. MCCOLLUM: You're welcome. Thank you for your
6 patience.

7 BY MS. MCCOLLUM:

8 Q Is this the -- I'm going to ask the question again. Is
9 this the kind of documentation you require from an investor
10 when they want to be reimbursed for something, or do you need
11 more than this?

12 A No. We wouldn't -- this wouldn't be reimbursable. This
13 would not because if this -- you read it's correction for
14 violations. It's for a license to rent the property in the
15 City of Clinton Township, so this is not something that would
16 be part of the figuring out for cost.

17 Q Why is that?

18 A Because this property was rented. This is a rental
19 expense, and I don't share in the rental income, so I don't
20 share in the cost of the rental property.

21 Q Turning back to Plaintiff's Exhibit 7, which is
22 Defendant's Exhibit J, does this property -- even with all
23 these expenses that you say are not compensable, does it show
24 that there's a profit?

25 A If you reduce the fee for Jon and Butch, this would show

1 approximately to what we've agreed to. We agreed to 5,000.
2 It would have a thousand dollar profit. And if you took off
3 the expenses that should not be allowed, the profit on this
4 would be 23,000, and Realty would be entitled to 30 percent
5 of the 23,000.

6 Q Do you know how much this property was rented for?

7 A I don't think they ever provided the lease to us on this
8 one.

9 Q Okay. Turn to Plaintiff's Exhibit 8 --

10 A Plaintiff.

11 Q -- our Exhibit 8.

12 A Yep.

13 Q Is this the same profit calculation worksheet that we've
14 been -- similar to what we've been talking about?

15 A It is.

16 Q What property is this for?

17 A 32404 Firwood in Warren.

18 Q Tell me about this property.

19 A This property -- a foreclosure. This one was a year
20 redemption, and this property -- once the party took
21 possession and eviction was done, this property was flipped.

22 Q So because it was a flip, are these expenses permissible?

23 A Well, most of them are, but legal would not be, license
24 would not be, professionals would not be. Repair and
25 maintenance is very high for a thousand -- you know, this

1 size house, so that --

2 Q Let me interrupt. How big is the house?

3 A Approximately a thousand or 1,100 square feet.

4 Q So if you took off the expenses that you think are not
5 compensable, what's the profit?

6 A \$12,000 would be the profit.

7 Q Not the 56 that they're showing here?

8 A No. They're actually showing --

9 Q They're showing -- the bottom line is they're showing
10 8,000, but if you go up two lines, there's a number in a box.

11 A Okay. I'm going off the profit they show as a loss, the
12 8,000.

13 Q Okay.

14 A You take -- say this cost that shouldn't be on there plus
15 a high repair and maintenance, probably about -- and 5,000
16 off the \$10,000 fee that they've increased, it would put this
17 at about a \$12,000 profit.

18 Q It shows here that they -- that defendants owned this
19 property for 712 days. Is that what this shows?

20 A It does, yep.

21 Q But it wasn't rented?

22 A I don't believe -- I don't believe so, no.

23 Q Vacant for almost two years?

24 A Well, it was a one-year redemption.

25 Q Oh, oh, oh.

1 A And it was a one-year redemption, and then it was
2 rehabbed, and then this is when we -- Jon decided to -- as a
3 real estate broker, to fire us and go with somebody else, so
4 that was -- other stuff was going on in the background, but
5 that is how long it took.

6 Q What is your opinion of the price that it was sold for?

7 A Really low now because, you know, it's probably a
8 \$120,000 house today, but I don't really know. I thought it
9 was worth more than the 84,9, but the seller gets to sell it
10 for what they want.

11 Q I'm sorry. What do you -- what did you say you thought
12 that the profit should have been?

13 A 12,000.

14 Q So you would be owed how much of that 12 --

15 A Thirty percent of 12,000.

16 Q Okay. So about \$3,000, \$4,000?

17 A Yep, yes, 4,000.

18 Q Do you think that this property was profitable?

19 A Yes, I do.

20 Q Even with all these numbers?

21 A Yes.

22 Q Okay. There's an Exhibit 8. Pages roughly 10 to 15 are
23 other properties. What are these properties?

24 A These are properties that we were -- we did these in
25 October of last year just showing you the value of properties

1 in that neighborhood, and then 8 of 15 is I had -- I listed
2 it for 99,9, and then Jon asked us to not have it listed so
3 he could go with somebody else. That's a copy of the listing
4 when I listed it for 99,9.

5 Q Did defendants -- how did they communicate that they
6 fired you on this property, if you remember?

7 A Phone calls to the agent and then also e-mails.

8 Q And they sold it for \$15,000 less than you listed it for?

9 A Correct.

10 Q Do you know why?

11 A I don't.

12 Q If they had asked you, would you have told them to sell
13 or to hold?

14 A I would have not sold it for 84,9. I would have -- you
15 know, maybe 94,9, but -- and then looking at the numbers, if
16 the numbers were correct, which I don't believe they were, I
17 would have probably rented this for another 24 months so we
18 could recover. We'd be where we're at now, and we'd have
19 \$130,000 property that we could share on the upside.

20 Q Turn to Exhibit 9. What property does this discuss?

21 A This is Trailwood.

22 Q Tell me about this property.

23 A This is a house that I bought at sheriff sale, and I'm
24 just checking. I believe -- I ultimately did a lease for Jon
25 and Butch that's included in here, page 9, for \$1,200 a month

1 back from the people who had lost it at foreclosure sale. We
2 did a lease with them for 1,200 a month.

3 Q Page 11 of Exhibit 9?

4 A Correct.

5 Q Okay. This was a rental?

6 A This was -- yes. This was a rental, yes.

7 Q Walk me through the expenses then and what would be
8 permissible and what wouldn't.

9 A Obviously the acquisition fee would be permitted because
10 that was paid. That was the first part. Association dues
11 would not be. The commission at 17,000 is way too much. I
12 mean it's six percent. The commission should be 10,000, not
13 17,000.

14 Q Do you know why it's listed at 17?

15 A I don't. Insurance would not be because it was a rental
16 property. Professional fees is nothing to do with the
17 property. Repair and maintenance would not be because it was
18 a rental property. Property taxes would not be part of the
19 calculation because it's a rental property. Utilities and --
20 would be the same. Recording fees and title fees would be
21 part of the cost for the closing, and Kelly's fee would be
22 permitted. And then also down at the bottom you wouldn't
23 have Butch and Jon's fee of 10,000. It should be five is
24 what we agreed on, and there should not be an interest
25 calculation on this property.

1 Q So with all of that, what do you think the profit on this
2 property was -- or should have been?

3 A The profit should have been like 81,000, and we would be
4 entitled to 30 percent of that.

5 Q Okay. And, again, you never agreed to this \$10,000 fee.

6 A Absolutely not, no.

7 Q Please turn to Exhibit 10.

8 A Okay. Ten. All right.

9 Q Tell me about this property.

10 A This is a calculation worksheet for 7376 Engleman in
11 Center Line. It's a five-bedroom, basement, garage house in
12 Center Line, Michigan.

13 Q Brick?

14 A Frame.

15 Q Okay. What happened?

16 A I have no detail on what happened.

17 Q If you go to Exhibit P, Defendant's Exhibit P, 2 of 5 is
18 the back-up detail, but --

19 A In this stuff here?

20 Q Yeah. Part 2 of 5 is the back-up detail.

21 A What letter is that again?

22 Q I'm sorry. P, part 2 of 5.

23 A P. This is 4 of 5.

24 Q So going back to Plaintiff's Exhibit 10, which is the
25 same as Defendant's Exhibit E, this property was purchased

1 for how much?

2 A Was purchased by when we bought it?

3 Q Yeah, yes.

4 A Purchased in the name of Jon Savoy on 9 -- October 9 of
5 2009 for \$17,627.

6 Q So the face page, the first page of Exhibit 10, the date
7 is wrong. You just testified that the sheriff's deed said it
8 was the 9th day of October, and the first page says that the
9 acquisition date was September 18th. Is that correct?

10 A Yep. They made up numbers, and they made up dates, yep.

11 Q So the calculation of the interest would be wrong?

12 A Yep, it would be.

13 Q So how much did they spend repairing a property that they
14 bought for \$17,000?

15 A It says that they spent 18,000, over 18,000.

16 Q How much do investors typically spend in terms of a
17 percentage to rehab houses?

18 A Twenty to thirty percent, but a house, buying it at 17,
19 you could probably spend -- because that's a really low
20 purchase price -- probably 8,000, half of it. You could
21 probably spend 50 percent of what you paid for it.

22 Q Would you ever spend more than the purchase price
23 rehabbing it?

24 A I wouldn't, no.

25 Q For this particular house, do you think that 18,000 is a

1 reasonable amount to spend to rehab it?

2 A I think it's extremely high, and I also think that you
3 would not rehab a property and then sell it for a loss. The
4 two don't make sense, you know. You'd rehab it and make a
5 profit or you'd rehab it and rent it, but you wouldn't rehab
6 it and sell it if you were going to lose \$40,000.

7 Q Was it rented? Do you know if defendants rented this?

8 A It was a rental property, yes.

9 Q If you turn to Exhibit P, part 2 of 5, the tab that says
10 "Repairs and Maintenance" --

11 A Repairs and maintenance. Inspection fees, taxes, service
12 fees.

13 Q It's after office supplies and professional fees. It's
14 the next tab. Be careful on the binder clips. I cut myself
15 this morning.

16 A Thank you. I'm having trouble. Sorry.

17 Q Well, because your exhibit isn't tabbed at all. Oh, here
18 it is. That's helpful.

19 A Wow.

20 Q If the property was bought in October of 2009, when did
21 redemption expire?

22 A October, November -- April. It would be April of 2010.

23 Q Do you know if this property was rented?

24 A It was a rental property, yes.

25 Q Do you know how much the monthly rent was?

1 A I don't.

2 Q Do you know when it was rented, approximately?

3 A I do not know that.

4 Q If you look back at Exhibit P, part 2 of 5, if redemption
5 expired in April of 2010 and it was a rental, what of these
6 expenses would be chargeable against the split?

7 A Well, the acquisition fee, the commission. Insurance
8 would not be. Inspection would not be. Licensing would not
9 be. Professional fees would not be. Repair and maintenance
10 would not be. Property taxes would not be. Utilities would
11 not be. Title fees and Kelly would be, and Butch and Jon's
12 fee should be 5,000.

13 Q Interest?

14 A Interest would not be.

15 Q So if you take all that off, is this house profitable?

16 A Yep. It's about at least 30 -- I'm doing it in my head,
17 but 35,000 in overcharges, so the property would be
18 profitable for a tune of about \$9,000.

19 Q So not a huge profit?

20 A Not a huge profit but a profit.

21 Q Did defendants lose their principal on this house?

22 A No, they did not.

23 Q Do you know if they had to evict a tenant or had any
24 unusual expenses, or were you fired before?

25 A Well, I'm looking at this transaction detail that they

1 provided to us yesterday. The person they evicted out of a
2 property we talked about already is the person that -- same
3 name as the one that painted this property, Michelle Welker,
4 also was a tenant on Edgewood -- Edgestone.

5 Q Why would you pay somebody on one property that you
6 evicted on another?

7 A I don't know.

8 Q Turn to Exhibit -- Plaintiff's Exhibit 11, please --

9 A Okay.

10 Q -- and Defendant's Exhibit A.

11 A Defendant's Exhibit A. Okay.

12 Q Before yesterday, had you ever seen this document before?

13 A I have not.

14 THE COURT: Which one? A or 11?

15 MS. MCCOLLUM: Defendant's Exhibit A.

16 THE COURT: All right. Sorry. Go ahead.

17 THE WITNESS: I have not seen it before, no.

18 BY MS. MCCOLLUM:

19 Q Tell me about 33221 Duncan.

20 A It's in Fraser. We bought it, became the owner of it.
21 We put this one on the market shortly after and sold it right
22 away on a land contract. The guy was a contractor in
23 landscaping and stuff, and he bought it on a land contract,
24 put a large down-payment down, agreed to make large payments.
25 I believe the price was -- my memory says like 84,000.

1 Q Turn to Exhibit 11, page 12.

2 A Page 11, 12. Okay. I'm there.

3 Q Is that the land contract for 33221 Duncan?

4 A Yes. We sold it for 84,9. We got \$25,000 down. The
5 balance of the land contract was 59,900, and the buyer agreed
6 to pay seven-percent interest.

7 Q And by "we" you're talking about defendants?

8 A Yeah. Defendants. I listed this property and handled
9 this transaction.

10 Q So this was before the break-up?

11 A Yes.

12 Q Turning back to Defendant's Exhibit A, tell me about this
13 exhibit.

14 A Basically it's a calculation worksheet for 33221 Duncan
15 in Fraser. It tells us what the land contract balance is.
16 It says as of today's date. We got this -- that might be a
17 December date or -- but we got this yesterday. It shows
18 different costs, and I would think the first stuff, the
19 Realty commission is fine, Jon and Butch fee of 5,000.
20 That's what we agreed to. Commission is fine. Insurance.
21 We flipped it. That's fine. This interest -- if this
22 interest -- I don't know. There's two interests here, but
23 there shouldn't be 273 days of interest because we sold the
24 property, and we get the interest from the land contract
25 purchaser. Legal should come out, 7,000. We had no legal on

1 this property. \$7,400. There was no legal.

2 Q Have you ever seen any back-up for that?

3 A No. It's not part of a property. Legal for a company or
4 other stuff that Jon and Butch have is not part of the
5 property transactions. Licensing fees would come out. Meals
6 and entertainment would come out. Office supplies.
7 Professional fees would come out. Repair and maintenance, if
8 they did something to the property, that would be fine.
9 Service charges would come out. Taxes would be fine because
10 it was a flip. Title would be fine. Kelly's fee, utilities.
11 Website. Why is there a charge for website? I mean these
12 numbers were manipulated to show they owe Realty zero, which
13 is not true. This property owes Realty -- I think this made
14 60,000, so we would be entitled to 30 percent of 60, which is
15 \$18,000.

16 Q Up at the top it's showing a land contract of today's
17 date of 21,097. Correct?

18 A Correct.

19 Q Is that correct, or should it be a different number?

20 A I don't know. I'd have to see the amortization schedule,
21 but if that is correct, this should be just transferred to us
22 because the -- you know, we're entitled to 30 percent of the
23 upside, and if that 30 percent is left, either cash should
24 come to us for the 18,000 or this land contract which would
25 have close to an 18,000 balance, should come to us.

1 Q Why is this showing the land contract balance rather than
2 the total sale price of 84,9? Do you know?

3 A I have no idea.

4 Q If you showed the total sale price, then you would come
5 up with your \$18,000 number about?

6 A Eighteen to twenty, yes.

7 Q Now, you did say that this was a flip, but if you look at
8 Exhibit 11, page 14 --

9 A Okay.

10 THE COURT: I'm sorry. What again?

11 MS. MCCOLLUM: Plaintiff's Exhibit 11, page 14.

12 THE COURT: Thank you.

13 BY MS. MCCOLLUM:

14 Q What does additional clause M and additional clause N say
15 with respect to taxes and insurance?

16 A The purchaser is paying all taxes. Purchaser is paying
17 all insurance.

18 Q So that stuff, even though this is a flip, should that
19 come off of this calculation, or do they still get to charge
20 off some of the interest and taxes -- sorry -- insurance and
21 taxes?

22 A I would say interest and taxes would come off.

23 Q Is Duncan one of the properties you consider that has not
24 yet been sold?

25 A It's been sold, but it hasn't been -- they haven't paid

1 the 30 percent owed to Ralph Roberts Realty, and the
2 agreement was they wouldn't pay it until the contract paid
3 off if it was 30 percent, or if the contract got to what was
4 owed to us, it would be assigned, and we would take the rest
5 of the payments, or it could be paid in cash.

6 Q Do you know if this property was sold as is to the
7 purchaser?

8 A We sell everything as is.

9 Q Turn to Plaintiff's Exhibit 12, please.

10 A Okay.

11 Q And also turn to Defendant's Exhibit D.

12 A D.

13 THE COURT: Ms. McCollum, I think at this time I'd
14 like to take a mid-morning break. It's 11 o'clock or almost
15 11, so we'll take ten minutes, and then I'll come back out.

16 THE CLERK: All rise. Court is in recess.

17 (Recess at 10:57 a.m., until 11:12 a.m.)

18 THE CLERK: All rise. Court is back in session.
19 You may be seated.

20 THE COURT: All right. Thank you. Go ahead,
21 Ms. McCollum.

22 BY MS. MCCOLLUM:

23 Q Please turn to Plaintiff's Exhibit 12 and Defendant's
24 Exhibit D.

25 A Okay.

1 Q What's Exhibit D?

2 A Exhibit D is a calculation worksheet for 5054 South Jimmy
3 Court in Chesterfield.

4 Q Tell me about this property.

5 A It's a property we bought at sheriff sale. After it
6 being not redeemed -- we actually did cash for keys on this
7 one for a thousand dollars. We sold this property on a land
8 contract to a Ms. Kim Sikorski.

9 Q If you turn to Exhibit 12, page 17 --

10 A Oh, wow. I misspoke.

11 Q Is she the person that rented it first before purchasing
12 it?

13 A Yep. She rented it for a year and then bought it on land
14 contract. I forgot about that part.

15 Q Turning back to Exhibit D, have you ever seen this profit
16 calculation worksheet before, before yesterday?

17 A No.

18 Q Tell me about the expenses on this profit calculation
19 worksheet in terms of the alleged profit or no profit.

20 A Well, the Realty would be fine. Jon and Butch fee of
21 5,000 is fine. There would not be association dues, would
22 not be insurance. There would not be interest, would not be
23 late fees. There would -- 7,000 in legal fees. There was no
24 legal fees on this property. Would not be licensing fees.
25 Would not be meals and entertainment. Would not be office

1 supplies. Would not be professional fees. Would not be
2 repairs and maintenance. Would not be service charges.
3 There would not be property taxes. There would be title and
4 recording for the closing. There would be Kelly's fee.
5 There would not be utilities, and there would not be a
6 website.

7 Q Is that because it was a rental or because it was a land
8 contract or both?

9 A Because it was a rental property.

10 Q So am I correct in saying that the total expenses are
11 more like \$11,000?

12 A Correct.

13 Q If that's the case, what's the profit on this property?

14 A The profit would be like 25,000.

15 Q And you'd be entitled to a third?

16 A Correct.

17 Q If you look at the number of days on Exhibit --

18 THE COURT: Is it a third or 30 percent?

19 THE WITNESS: I'm sorry. I answered "yes" to a
20 third, but 30 percent is what it is.

21 THE COURT: All right. Thank you.

22 BY MS. MCCOLLUM:

23 Q So 30 percent of -- I'm sorry -- 23,000? Is that what?

24 A Twenty-five.

25 Q Twenty-five. If you look at the number of days on here

1 that's being used for the interest calculation, do you know
2 where that number comes from?

3 A I don't.

4 Q If you turn to Exhibit 12, page 11, what does it say with
5 respect to the purchaser under the land contract, duties to
6 pay taxes and insurance?

7 A Under 11?

8 Q Yeah. Exhibit 12, page 11.

9 A The taxes would be paid by the land contract purchaser,
10 and the insurance would be paid by the land contract
11 purchaser, and also the maintenance fee would be paid by the
12 land contract purchaser since the land contract you're the
13 owner. You're the one living there.

14 Q Kind of like if you're buying a house on a mortgage. You
15 own the property --

16 A That's correct.

17 Q -- subject to the mortgage. Please turn to Plaintiff's
18 Exhibit 13 and Defendant's Exhibit G. What property do these
19 two exhibits relate to?

20 A This is for the property on Irene in Warren.

21 Q Is the acquisition date listed on Exhibit G correct?

22 A No. It's not even close. It's a made up -- the
23 acquisition date is just made up. They bought it in --
24 November 13th of 2009.

25 Q At a sheriff sale?

1 A At a sheriff sale.

2 Q Walk me through Exhibit G in terms of the expenses. I'm
3 sorry. Before that, is Irene being rented currently?

4 A As far as I know, it's rented. We originally rented it
5 to the homeowner who lost it in foreclosure.

6 Q If you turn to Exhibit 13, page 15, is that a copy of the
7 lease or a lease with respect to this property?

8 A This is -- yeah. That's the -- Dave and Karina, that's
9 the tenant. This is January. We actually bought it in
10 November, got them to sign off, and they started paying rent
11 in January of 2010 like 60 days after the foreclosure sale.

12 Q If you turn to Exhibit 13, page 19, who's the agent for
13 defendants on this lease?

14 A Ralph Roberts. I was the agent for Adams Residential
15 Property.

16 Q Did you prepare this lease?

17 A I did, yes.

18 Q Now, turning back to Defendant's Exhibit G, given that
19 this is a rental, walk me through the permissible and
20 nonpermissible expenses on this sheet.

21 A Well, you would take the insurance out. You'd take
22 interest out. You'd take legal out; licensing fees; take out
23 office supplies; take out postage and delivery; professional
24 fees of 3,500; 15,649.14 in taxes; repairs and maintenance,
25 10,504.90; service charges of \$3.33. Like seller's

1 concession, I mean that's just so made up, 3,540.

2 Q Because the property hasn't been sold yet?

3 A That's correct. Title and recording you would have. I
4 mean this is like an estimate that they're trying to
5 calculate, but you would have title. You would have Kelly's
6 fee. You would not have utilities. You would not have a
7 website, so this -- this would be -- and 118, it's worth more
8 than that right now. I would say it's worth like 128. So
9 that would be 10 plus 52 in made-up costs taken off there,
10 62 -- that would put the profit on this property at about
11 \$81,000, and we would be entitled to 30 percent of 81,000.

12 Q Have you ever received back-up documentation for any of
13 these expenses listed here on Irene?

14 A I have not.

15 Q Did you ever -- and I apologize for not asking you
16 before. Did you ever receive back-up documentation for
17 Defendant's Exhibit A for Duncan in Fraser?

18 A Absolutely not, no.

19 Q Did you ever receive back-up documentation for
20 Defendant's Exhibit D, Jimmy Court?

21 A No.

22 Q Is Irene currently being rented?

23 A As far as I know, it's still rented to the same people
24 from the original lease I did.

25 Q Please turn to Exhibit 14.

1 THE COURT: Excuse me if I may interrupt. The Irene
2 property has not yet been sold; is that correct?

3 THE WITNESS: That's correct.

4 THE COURT: Okay. I thought that was the case, but
5 I want to be sure. Thank you. Go ahead. I'm sorry.

6 BY MS. MCCOLLUM:

7 Q Actually, go back to Exhibit 13 -- I apologize -- and
8 Defendant's Exhibit G.

9 A 13. Okay.

10 Q I'm sorry. Defendant's Exhibit G is where I want to be.

11 A Okay.

12 Q What does it say by number of days?

13 A That they believe we should calculate interest for 1,365
14 days into their cost.

15 Q Why?

16 A So they don't have to pay me anything, I guess.

17 Q And now turn to Plaintiff's Exhibit 14 and Defendant's
18 Exhibit B.

19 A B?

20 Q Yes, B like boy.

21 A Okay. 14. Okay. I'm there.

22 Q What property is this for?

23 A This is for Teppert in Eastpointe, 23795 Teppert.

24 Q Is the acquisition date listed on Defendant's Exhibit B
25 correct?

1 A No. The acquisition date was actually September 18th of
2 2009, not March 19th of 2010.

3 Q Do you know why there's that discrepancy?

4 A I don't know. They're making up numbers, so they made up
5 dates, I guess, too.

6 Q Is Teppert -- has Teppert been sold by the defendants?

7 A Not that I know of because we rented this one to the
8 person who lost it at sheriff sale.

9 Q If you turn to Exhibit 14, page 13 --

10 A Okay. Okay.

11 Q Is that the lease with the person that lost it at sheriff
12 sale?

13 A It is. This is the lease that I did for Jon Savoy's LLC.

14 Q So this is currently being rented and still owned by
15 defendants?

16 A That's correct.

17 Q So walk me through Defendant's Exhibit B in terms of the
18 permissible expenses and the nonpermissible expenses.

19 A The calculation worksheet -- it's an estimate because
20 this house has not been sold yet, but Butch and Jon's fee
21 would be fine. Our fee would be fine. Commission would be
22 fine. There would not be insurance. There would not be
23 taxes. There would not be 7,000 in legal, would not be
24 licensing fees, would not be meals and entertainment, would
25 not be office supplies, would not be professional fees, would

1 not be repairs and maintenance, would not be service charges.
2 There would be no taxes. Kelly's fee would be fine because
3 that's what we agreed to. Transfer and title would be about
4 \$900 on this property, not 1,800. There would be no
5 utilities, and there'd be no website, and there would --
6 yeah. That would --

7 Q So what does that mean in terms of the profit on this
8 property if it were to be sold today?

9 A That the profit would be about -- if it was sold today,
10 we would -- or I was getting paid off today, it would be like
11 22,000, and we'd be entitled to 30 percent of 22,000.

12 Q Do you think that defendants' estimate of the value of
13 this property is right at 45,000?

14 A I would think that's pretty accurate for this property,
15 yes.

16 Q Would you advise defendants to continue to hold onto it
17 and rent it or to sell it?

18 A Advise them to pay me my 30 percent and let me move on.

19 MS. MCCOLLUM: I have no further questions for Mr.
20 Roberts on direct.

21 THE COURT: All right. Mr. Kwiatkowski.

22 MR. KWIATKOWSKI: Thank you.

23 CROSS-EXAMINATION

24 BY MR. KWIATKOWSKI:

25 Q Good morning, Mr. Roberts.

1 A Good morning.

2 Q You testified that the investor program started in 2009;
3 is that correct?

4 A May 19th of 2009 is when I came up with it, and I started
5 the program in -- June 1st of 2009.

6 Q When was your first meeting with the defendants?

7 A I don't know the date.

8 Q Approximately?

9 A I don't know the date. In 2009, though.

10 Q All right. What were the terms of the deal specifically
11 with the defendants?

12 A On flip properties, we would take the cost. We would get
13 a \$5,000 acquisition fee. Jon and Butch would get a \$5,000
14 fee. When we first bought the property, we'd get 2,500.
15 When we perfected title, we'd get 2,500 of our acquisition
16 fee. Then when we sold the property, we would get 30 --
17 Ralph Roberts Realty would get 30 percent, and Butch and Jon
18 would get 70 percent.

19 Q How is the 30 percent calculated?

20 A When earlier I -- I went to Butch, and it turned out
21 Butch didn't have any money, so he went to Jon because Jon
22 had money. And then ultimately we met, and they wanted to go
23 three ways. So originally I thought it was a third, a third,
24 a third.

25 Q I'm sorry. I was -- I guess you didn't understand my

1 question. I was asking how is the 30 percent calculated, the
2 profit split? Does that make it easier?

3 A Okay. It could. And we're talking about on the flip --
4 I mean there's -- on the flip -- there's different -- I
5 have --

6 Q Well, in 2009, was there only one program?

7 A It's the same program. There's flips. Then there's
8 rentals. It's the same. It's the same program.

9 Q Is that how it was explained to the defendants in this
10 case?

11 A Yes, yes.

12 Q And that's how it's been explained to every single
13 investor, that there's only one program?

14 A No. There's one program. There's an investor program.
15 Everybody pays a \$5,000 acquisition fee, and everyone --

16 Q But I'm not -- I'm sorry to interrupt you, but I'm not
17 asking about the acquisition fee at this time. I asked you a
18 specific question. Is there only one program?

19 A There is one program that has different pieces to it,
20 yes.

21 Q In 2009, did it have different pieces?

22 A Yes.

23 Q So in 2009 when the program was explained to the
24 defendants, you explained that there was a flip and a rental
25 deal.

1 A Yes; correct.

2 Q So isn't, in essence, that two programs?

3 A Well it all starts from the same place, and then they can
4 decide if they're going to rent it or they're going to flip
5 it.

6 Q So when we go back to where we started, the defendant's
7 30-percent profit split that's payable to the plaintiff here,
8 how do you calculate the profit split?

9 A On a rental property or on a straight flip?

10 Q Start with a rental.

11 A So on a rental, Ralph Roberts Realty agreed to not keep
12 any of the rental income. We're not splitting the rental
13 income 50-50 or in this case 30 percent to us, so the
14 investor would keep all the rental income, and they would
15 then be -- pay all the expenses, repairs, maintenance,
16 insurance, taxes, any -- so when the property is sold, we
17 don't add the rent back into the calculation, and they don't
18 add the expense back into the calculation. That's separate
19 with the landlord outside of the split. So we take the
20 acquisition price plus the cost of sale to sell it for the
21 closing, and if there's 40,000, you times that times 30.
22 Then Ralph Roberts Realty would get \$12,000.

23 Q How many profit splits have you received in 2013?

24 A Probably 30.

25 Q How many since July of 2013?

1 A I don't know the breakdown of that.

2 Q How many would you say you've gotten prior to July of
3 2013?

4 A I don't know what the number is prior to July of 2013,
5 but I testified earlier I think there's been about a hundred
6 flips.

7 Q I'm just trying to get to finite from July to now. Would
8 you say the number is less than ten?

9 A No. It's more. It's more than ten. I know in December
10 there was probably seven or eight just for December.

11 Q Okay. So even at best 20?

12 A Sure. Okay.

13 MR. KWIATKOWSKI: I'd like to introduce as a
14 rebuttal exhibit -- I think this would be Exhibit R.

15 MS. MCCOLLUM: Do you have a copy of that exhibit
16 for me?

17 MR. KWIATKOWSKI: Yeah. She's marking it.

18 (Defendant's Exhibit R marked at 11:34 a.m.)

19 MS. MCCOLLUM: Is this the same that was attached to
20 your trial brief that was filed on Friday at Document 55?

21 MR. KWIATKOWSKI: Correct.

22 BY MR. KWIATKOWSKI:

23 Q Mr. Roberts, I'd like you to flip to page 31.

24 A Okay.

25 Q If you could read line 7 through line 10 out loud.

1 A "Prior to filing your bankruptcy case, how many investor
2 splits had Realty gotten?" Question. Answer: "Ten or
3 twelve. It wasn't a lot over from 2009 until May 25th of
4 2012. About a dozen."

5 Q So do you want to correct possibly the testimony you had
6 just given that you received a hundred profit splits because
7 that would mean from May 25th, 2012, through today you've
8 gotten 88? And you testified that in 2013 you maybe got 30,
9 so that puts you at about 42.

10 A I told you 2013 I didn't know how many I've had.

11 Q You approximated it at 30, though; is that correct?

12 A I didn't. You tried to give me the approximate at 30. I
13 still think this is correct because --

14 Q So you did 88 profit splits --

15 A If I did only --

16 Q -- in 2013; is that correct?

17 A If I did --

18 MS. MCCOLLUM: No.

19 THE WITNESS: What?

20 MS. MCCOLLUM: Objection. That mischaracterizes the
21 testimony.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: Okay. Could you repeat it, please?

24 BY MR. KWIATKOWSKI:

25 Q Based on the testimony in your prior trial --

1 A Um-hmm.

2 Q -- you testified that from the inception of the investor
3 program until May 25th of 2012, you did 12 profit splits.
4 You had -- Realty received 12 profit splits. That would mean
5 from 2012, May, through today, you've done 88.

6 A All right. So this number here from this testimony is
7 probably a number directly from my bankruptcy case. We
8 exactly would have had that number, so for sure the testimony
9 here is correct, and my testimony is still the same. I think
10 I've done about a hundred flips now.

11 Q Okay. So is the answer to your question --

12 A I don't have --

13 Q -- to the question that in 2013 you did 88 splits?

14 A No. The answer to my question, from May 25th of 2012 to
15 now, I've done enough to bring the number up to approximately
16 a hundred splits, yes.

17 Q So you've done three or four times the usual -- five
18 times what you did in three years in the last year?

19 A Absolutely.

20 Q What was the deal in 2009 with the defendants regarding
21 acquisition fees?

22 A I testified earlier that -- and it's still the same --
23 that they would pay 2,500 at the acquisition, the sheriff
24 sale, and they would pay 2,500 when title was perfected like
25 if the sheriff deed expired or we got cash for keys done or

1 whatever to make sure that the property was not going to be
2 redeemed.

3 Q Did any of the acquisition fees ever get paid at closing
4 of properties?

5 A Possibly the balance of an acquisition fee could have,
6 yes, but I don't have --

7 Q Was that part of the deal you made with the defendants?

8 A It was just trying to get paid. If that's what
9 happened -- I don't know that that happened, but that could
10 have happened.

11 Q Was that part of the initial agreement when you sat down
12 that they could pay at closing?

13 A That was not ever part of the agreement. If we got paid
14 at closing, that would mean they just hadn't paid when they
15 were supposed to.

16 Q So that wasn't part of the deal?

17 A That was not part of the deal.

18 Q In the investor program, is there a provision for
19 splitting of losses?

20 A When Jon and Butch and I started and Ray Confer started,
21 no, there was --

22 Q That's not what --

23 A Huh?

24 Q In 2009 in the program --

25 A There was no -- it was never even discussed. It was no

1 splitting of losses because if you're buying stuff 20, 30, 40
2 percent of -- how do you lose money? You can't lose money,
3 so we never even discussed losing money, so it wasn't
4 discussed. It was not part of the program.

5 Q So it was never discussed. Your testimony is you never
6 discussed the investor program having a splitting of losses
7 with the defendants?

8 A I have never, no.

9 Q Is it part of the investor program?

10 A It wasn't when we did these deals. It was not, but since
11 then it has come up that we get 50 percent of the upside, so
12 we should share in 50 percent of the downside, but until --
13 in all the houses we've sold, okay, approximately a hundred
14 since the program started, there's not ever been a loss until
15 Butch and Jon have said now that after they fired me -- first
16 they always made profits. Then they fired me, and now they
17 all lose.

18 Q Maybe that's why they fired you.

19 A Because they want to not make money?

20 Q No. They started to lose money, so they fired you.

21 A They never lost, no. They never lost money with me
22 before they fired me, not once.

23 Q Could they have fired you because you didn't find them
24 profitable properties?

25 A No, it's not, because that's not true.

1 Q So there's been a thousand properties, correct, purchased
2 by Realty?

3 A That's correct.

4 Q And you've received a hundred splits; is that correct?

5 A Approximately a hundred splits; correct.

6 Q So there's 900 that you hadn't been paid on?

7 A That's not true.

8 Q Okay. How many have you not been paid on?

9 A Earlier I testified there's about 500 properties.

10 Q There's 500?

11 A About 500 got redeemed, so there's not a thousand in
12 inventory. It's less than -- the number is less than 500.

13 Q So there's 500.

14 A Yes.

15 Q And before May 25th, 2012, you testified, because you
16 said that in your prior trial that it had to be accurate, you
17 received 12 splits; is that correct?

18 A That's correct.

19 Q So you had about 488 outstanding splits out there?

20 A Yes.

21 Q Why didn't you sue any of those people --

22 A Why would I --

23 Q -- to make them pay you the splits?

24 A Because they're not going behind my back selling houses
25 and trying -- they're not cheating me yet, you know. They're

1 not doing that. People are honoring their agreement.

2 There's only been a handful of people who haven't.

3 Q But you're suing my clients for houses that aren't sold.

4 A That's correct.

5 Q And there's -- part of your agreement doesn't require
6 them to sell the properties, does it?

7 A No. The idea was to sell everything within five years,
8 but I can't force them to do that.

9 Q When you started the program, was it your intention to
10 ever rent properties?

11 A I thought everybody would want to flip except for Ray
12 Confer. I've sold him houses for 30 years. He's never
13 flipped one house that I know of, so other than Ray, I
14 thought everybody else would flip, but --

15 Q So if you thought everyone would flip at the beginning of
16 your program, why did you have a rental provision in the
17 investor program?

18 A Because right away as we -- because Ray rented his
19 properties obviously, but right away we --

20 Q But you knew Ray -- sorry for interrupting, but --

21 A Yeah.

22 Q -- you knew Ray, and you knew that was always his plan --

23 A Right.

24 Q -- because Ray has never paid you a split?

25 A That's correct.

1 Q Does Ray ever have to pay you a split?

2 A Hopefully when he's flipped stuff, yes.

3 Q So Ray is part of the program?

4 A Yes, he is.

5 Q And he will pay you a split someday?

6 A Absolutely.

7 Q And so the deal that Realty set forth with the new
8 investors, even though it was Realty's intention that they
9 would flip the properties, you still set up for -- this
10 investor program for rentals?

11 A I did.

12 Q Even to your first investors?

13 A Right away, yes.

14 Q How did you explain it to Mr. Savoy, the rental aspect,
15 or -- strike that -- the defendant -- how did you explain it
16 to the defendants?

17 A I'm not -- I don't understand what you're asking me.

18 Q How did you explain the rental procedure with the
19 defendants?

20 A I would explain it the same way I explained it to
21 everybody. If you rent the property, we're not going to
22 share in the cash flow, and we're not going to share on the
23 expense side of it.

24 Q Can you please -- excuse me -- please flip to page 32 of
25 Exhibit R?

1 A Okay.

2 Q Please read line 1 through 5.

3 A Okay. "If you're" -- through 5. Okay. "If you're
4 buying it and fixing it, flipping it, all expenses are
5 against it. If you're buying it and renting it, then there's
6 taxes, insurance we don't count against it, but anything that
7 has to take the property to be able to sell would be an
8 expense within reason."

9 Q And then please -- and then skip to line 10, please, and
10 read that through 14.

11 A Okay.

12 "Are there any expenses that you -- aren't
13 included that you would include?

14 Answer: The investor's personal time. There's
15 no expense for the investor's time, but everything
16 else that's paid to someone -- verified and paid to
17 someone is an expense.

18 Question: Do you explain this to your" --

19 Q That's enough. I'm sorry. I told you to stop at 14.

20 A All right. Sorry.

21 Q And these lines I had you read out of your testimony from
22 a former trial in this --

23 A Um-hmm.

24 Q -- in your bankruptcy case; is that correct?

25 A That's correct.

1 Q And you recognize this testimony?

2 A That's correct, yep.

3 Q And you admit this was you testifying?

4 A Yes.

5 Q And in the discussions from the lines -- we'll call it 1
6 through 14 on page 32, what's being discussed here?

7 A One through what?

8 Q One through fourteen.

9 A What's being discussed here is a property in Roseville
10 that --

11 Q No. I'm asking -- I'm sorry. I'll rephrase the
12 question. What specifically are we talking about here? Are
13 we talking about profit splits and the expenses?

14 A We're talking about one property in Roseville that Roger
15 Roberts bought. That's what I was testifying about, one
16 property.

17 Q In lines 1 through 14 on page 32, are you discussing that
18 property, or are you discussing the investor program in
19 general?

20 A I was testifying about the property with Shirley and
21 Roger Roberts. That what I was for sure thinking of when I
22 was testifying at this time.

23 Q Okay. So lines 1 through 14 on page 32, that's not about
24 the investor program? That's strictly on Roger Roberts?

25 A It's for sure about the investor program also, but I

1 would -- this is one property, one case that we were -- I was
2 being questioned on. I was only thinking about --

3 Q But you have one program is your testimony, so it should
4 be the same for everyone.

5 A No, I didn't. That's not -- I have two -- and to answer
6 you, I have two programs. I think I have one with a rental
7 version and a flipping version, but -- so I have two. I have
8 a rental version and a flipping version if that can keep us
9 so that I can clear -- give you good answers on the questions
10 that you have.

11 Q Prior to your testimony today regarding the rental
12 version and the flipping version, did you ever allude to that
13 in any of the motion practice or pleadings in this case?

14 A I don't know the answer to that.

15 Q Did you ever read the complaint in this case?

16 A I did.

17 Q And when it discussed the -- do you remember what it
18 said?

19 A I don't, no.

20 Q I'll go back to that, but I'll move forward for a moment.
21 You discussed that the program with Mr. Savoy never had
22 mention of splitting the losses; is that correct?

23 A That's correct.

24 Q However, the program does split losses; is that correct?

25 A No. The program does not split losses.

1 Q Your program doesn't -- the investor program does not
2 split losses?

3 A We've never had one.

4 Q Is it in the program to split losses?

5 A It is now. I feel that I'm entitled to 50 percent of the
6 upside, and if --

7 Q And you share in 50 percent of the downside.

8 A -- 50 percent if there's a downside, but there's not been
9 a loss.

10 Q That wasn't my question, though.

11 A Okay.

12 Q The question is if there was a loss, you would share in
13 it?

14 A Currently, yes.

15 MR. KWIATKOWSKI: Can I approach the bench to mark
16 Defendant's Exhibit S as a rebuttal exhibit? It's the
17 affidavit.

18 THE COURT: Go ahead.

19 (Defendant's Exhibit S marked at 11:51 a.m.)

20 BY MR. KWIATKOWSKI:

21 Q Page 4 --

22 A Okay.

23 Q -- line 23, states, "The investor program does not
24 contain any provision for the splitting of losses on
25 properties," so is that a truthful statement, Mr. Roberts?

1 A Yes.

2 Q How?

3 A It's truthful with Jon and Butch. That's the agreement
4 we had.

5 Q But that's not what this says.

6 A Yes. That's what that --

7 Q This says the investor program.

8 A All right. When I did this affidavit, it was for this
9 case. I never had a splitting of losses arrangement with Jon
10 and Butch. I currently now in my program believe that if
11 there's a loss, I'm responsible for 50 percent. If there's a
12 gain, I get 50 percent. But that did not exist when the
13 program was started. As I said earlier, the important piece
14 to me is there's never been a loss, so --

15 Q That's not the question, and that's not what this says.
16 This doesn't say -- your affidavit doesn't say, "I didn't
17 have an agreement with Mr. Savoy." It says, "the investor
18 program," so we both know that the investor program is
19 whatever deal is in place right now. You described the
20 investor program in detail. You just admitted on the stand
21 that you share losses. You just filed an affidavit.

22 A I did not admit on the stand I share losses.

23 Q Really?

24 A I said on the stand there's never been a loss. I've
25 testified that if there is a loss, I feel I'm responsible for

1 my 50 percent if there's a downside like I'm entitled to 50
2 percent of the upside.

3 Q Correct. Isn't that -- well, isn't that sharing losses?
4 If you're entitled to the upside, and you just testified that
5 you're entitled to the downside, isn't that sharing losses?

6 A Is that a question?

7 Q Yes.

8 A Okay. Can you repeat it, please?

9 Q If you share in the upside --

10 A Um-hmm.

11 Q -- you testified very clearly --

12 A Um-hmm.

13 Q -- share in the upside, you share in the downside. Isn't
14 that sharing losses?

15 A Yes.

16 Q Thank you.

17 A Well, if the --

18 Q That's all.

19 A Okay.

20 Q Just answer the questions --

21 A Yeah.

22 Q -- "yes" or "no."

23 A Okay.

24 Q Can you show me in this affidavit that describes your
25 procedural posture and dealings with Mr. Savoy where it talks

1 about the rental agreement?

2 A I don't know.

3 Q Take a second and review it. I know it's a surprise to
4 hear the -- about this agreement today.

5 A Okay. So what was the question?

6 Q I'll withdraw that question.

7 A You had me read this, so I can't answer it then?

8 Q I'm just going to move on.

9 A Well, 31 says if investors rented the property, the
10 rental income would be credited against any expenses incurred
11 by the investor on the property.

12 Q What steps did Realty take to protect the principal of
13 the investors?

14 A Which -- on which property?

15 Q Just in the general program.

16 A We would make sure we're buying first positions. We'd
17 make sure our investors got insurance on them right away and
18 anything else that's required, giving them advice, recommend
19 what they should do to maximize the return on any particular
20 property.

21 Q How did you know what was a good property?

22 A Finding properties that are -- can be acquired at a
23 distressed price, at a discount, which have the potential
24 of -- have good upside on them, so buying properties below 50
25 percent of what they're worth is a good opportunity and still

1 is.

2 Q And you provided that information to your investors?

3 A I do provide that information to my investors.

4 Q Dealing specifically with Mr. Savoy's group, we'll call
5 it -- sorry. Dealing specifically with the defendants'
6 group, what due diligence was done regarding the LedgeStone
7 property?

8 A From what point? From when we -- from when we purchased
9 it?

10 Q From the beginning.

11 A What -- your exhibit -- what number is LedgeStone?

12 Q You can refer to the plaintiff -- or the defense Exhibit
13 J.

14 MS. MCCOLLUM: LedgeStone is also Plaintiff's
15 Exhibit 7.

16 THE WITNESS: Okay. I remember this property. We
17 researched it. There was a family that had -- was going
18 through a divorce, and there was -- also had been through a
19 bankruptcy. They were at two different -- they were at two
20 different locations. I don't remember how many mortgages it
21 had at this time, but I thought it had great potential to
22 send it out. Jon and Butch opted in for it, bought it,
23 and --

24 BY MS. MCCOLLUM:

25 Q What information did you tell them specifically that it

1 was a good deal?

2 A I can't remember. I've sent out thousands of properties.
3 I can't remember what I said about this particular property.

4 Q Did you go to the property?

5 A I did not go to this one at that time. Someone else who
6 worked for me, John Selby, went to the property, took
7 pictures as we're assessing title, taxes, insurance,
8 different things behind the scenes, bankruptcy, divorce,
9 state liens, federal liens. Someone was doing a field
10 inspection. And we take that information, and then we send
11 that out to the investor group.

12 Q You testified earlier that you've been in real estate
13 since 1975; is that correct?

14 A That's correct.

15 Q And you've only made a handful of mistakes. Was
16 Ledgestone in there as one of the mistakes?

17 A Absolutely not. Ledgestone was not a mistake.

18 Q You didn't -- did you advise the defendants of a looming
19 tax foreclosure?

20 A There was taxes owed on this property?

21 Q That's not the question. Please answer the question.

22 A I informed -- on all properties we inform when there's
23 taxes owed on the property. Yes, we did.

24 Q Did you do that before or after they bought it?

25 A Before.

1 Q Can you flip to Plaintiff -- or I'm sorry -- Defendant's
2 Exhibit O, page 1? Read the first line.

3 A First line. "There is delinquent property tax owed on
4 this property. We should go ahead and pay them and then file
5 a tax affidavit."

6 Q And when was the sheriff sale on LedgeStone? Do you
7 recall?

8 A LedgeStone was -- LedgeStone -- LedgeStone was December
9 11th of 2009.

10 Q And your e-mail, Exhibit O, references that you're
11 notifying them regarding delinquent taxes in January. Is
12 that after they purchased the property?

13 A That e-mail is after purchasing the property. That
14 doesn't mean we didn't notify them before. It's normal
15 course of business.

16 Q But you don't have any documents to show you told them
17 before.

18 A I for sure told them before.

19 Q Everything was on the table when they decided --

20 A Absolutely.

21 Q -- to buy a property --

22 A Absolutely.

23 Q -- that had \$9,000 of taxes of owing?

24 A It's distressed real estate bought at discounted prices.
25 That's part of this investing in sheriff sale business.

1 Q Firwood was another property you purchased for Mr. Savoy,
2 is that correct, or Mr. Savoy's group?

3 A Yes.

4 Q What type of due diligence was done prior to purchase of
5 Firwood?

6 A Same thing. We would start with the mortgage, see what
7 else is out there. This particular property was a 12-month
8 redemption. The party who lived there was -- wouldn't answer
9 the door. We tracked the previous owner down through his
10 sister and his brother-in-law. House was -- had great
11 upside. It was a 12-month redemption, but if you do 12-month
12 redemptions, you get long-term capital gain versus short-term
13 capital gain, so there's some other benefits there. And we
14 determined that we did not think the person who owned it
15 would have the wherewithal to be able to redeem plus since he
16 was kind of a hermit, we felt that no one else would ever be
17 able to get to him to bump us off and take our transaction,
18 sent it out to the group. Jon and Butch wanted it. Jon and
19 Butch went by and assessed it. Jon and Butch checked the
20 numbers, and they decided to go forward with the purchase.
21 And till today I thought they thought that was a good
22 investment and a great buy at the time.

23 Q So losing \$8,000 is a great buy?

24 A They did not lose \$8,000.

25 Q What evidence do you have to support the fact that they

1 didn't lose \$8,000?

2 A Well, one is that they paid themselves ten. It's pretty
3 easy. If they really did lose eight and paid themselves ten,
4 they did not lose eight. And I believe the numbers are
5 fabricated.

6 Q What evidence do you have to support the fact that the --
7 that it's fabricated other than your testimony?

8 A My 30-some years' experience of doing this, and that's
9 what I have.

10 Q What numbers are fabricated on Firwood?

11 A Repairs and maintenance, licenses, legal, professional
12 fees, utilities.

13 Q But those are expenses that were paid and credited on
14 past sales; isn't that correct?

15 A For other investors or for Jon and Butch?

16 Q For Jon and Butch.

17 A If they're verified and real good numbers, yes, but not
18 if they're fabricated and made up.

19 Q So you paid legal. You paid accounting fees. You
20 paid --

21 A No. No, I did not.

22 Q -- license fees.

23 A No, I did not. Not knowingly, I did not. I'm not -- why
24 would I pay accounting fees? Why would I pay legal fees for
25 their companies?

1 Q Because it was part of the deal.

2 A It's not part of the deal.

3 Q It was part of the investor program.

4 A Never seen it.

5 Q Any and all expenses.

6 A Never seen that before.

7 Q Is that because you didn't have many profit splits?

8 A I'm talking about with Jon and Butch.

9 Q They never e-mailed these to you?

10 A No, they did not.

11 Q The title company didn't have them?

12 A Before we were fired, we did get numbers, and we --

13 Q Right.

14 A -- did know what we were going to get paid, and the title

15 company paid us at closing.

16 Q So like for instance on --

17 A After Jon fired us, he never shared anything anymore. He

18 went dark on us. He didn't return phone calls.

19 Q So -- excuse me -- on 2630, let's take a look at

20 Plaintiff's -- or I'm sorry -- Defendant's Exhibit H.

21 A H. Okay.

22 Q Realty and Savoy's fee, no dispute.

23 A No dispute.

24 Q Kelly, closing fee, no dispute.

25 A No dispute.

- 1 Q Interest credit, no dispute.
- 2 A Nope.
- 3 Q Initial insurance prepaid, no dispute.
- 4 A No.
- 5 Q Accounting fees, no dispute.
- 6 A No. That's not true.
- 7 Q Well, wait a minute.
- 8 A I would --
- 9 Q Excuse me.
- 10 A I dispute accounting, licensing, and office. Now, I'm
- 11 not -- I did pay it on this, but I didn't see this in advance
- 12 to be able to approve this or not.
- 13 Q Title company didn't have this?
- 14 A No.
- 15 Q You never saw this?
- 16 A I took their word that the number we were getting,
- 17 \$3,347.01, was the correct number. I would have never agreed
- 18 to pay those last three items.
- 19 Q But you did.
- 20 A Why would I -- why would I pay for office supplies for a
- 21 house?
- 22 Q Because it was part of the deal you cut with the
- 23 defendants.
- 24 A That's not true.
- 25 Q But your course of conduct shows it is.

1 A Of course. This was hidden from me. If I didn't see it,
2 I couldn't --

3 Q How was it hidden? You were paid.

4 A I was never given the back-up. I trusted Jon and Butch
5 to pay me what I was entitled to.

6 Q Why didn't you ask? Seems to be a pertinent idea. I'm
7 doing a sophisticated business transaction. I need to see
8 how much I'm getting paid.

9 A I thought they were honorable, I could trust them, and
10 they were paying and not cheating me. Okay? I will give you
11 I did pay this but unknowingly. I did pay it. I'm not
12 asking for it back. I paid it. I believe it was wrong that
13 they charged me, but I did pay it.

14 Q But you don't think they're entitled to these fees
15 even --

16 A Why does a house need pens, tape -- you know, tape,
17 Scotch tape? It's a house. Why does it need a license?
18 What license? There's no license for that house. And
19 accounting, there's no accounting for that house. Maybe the
20 LLC had accounting, but that's the LLC's cost, not Ralph
21 Roberts Realty cost. I pay my own accounting. I pay my own
22 office supplies. I pay my own licensing fees.

23 Q It's an expense of the LLC.

24 A That's correct. I don't -- I never agreed. I'm not part
25 of the LLC.

- 1 Q That wasn't part of your deal?
- 2 A Absolutely not.
- 3 Q Expenses, can't take that off the profit split?
- 4 A No. You can't pad the expenses so you can pay me less.
- 5 That's not fair.
- 6 Q But you were paid the \$3,347 with no complaints.
- 7 A That's correct.
- 8 Q Now you want to complain; correct?
- 9 A That's not true, Scott, because I'm not asking for it
- 10 back. You're the one questioning it.
- 11 Q No.
- 12 A I'm not --
- 13 Q Only because you said that -- you said that these
- 14 wouldn't be allowed, but they were allowed; right?
- 15 A They were taken from me without my knowledge, yes.
- 16 Q You accepted payment as -- payment in full on Antonia;
- 17 correct?
- 18 A I did, yes.
- 19 Q With all the deductions?
- 20 A Without knowing the deductions, I accepted the \$3,347.01.
- 21 I'm not asking for anything back. I'm happy with that
- 22 number.
- 23 Q Because it's the right number.
- 24 A That's not correct.
- 25 Q But you accepted it anyways. Was Antonia rented?

1 A No.

2 Q So it was just a flip. It was never rented?

3 A I don't believe so. Could have rented it for a few
4 months, but I don't think so.

5 Q This was what I would like to call the honeymoon time.
6 Wouldn't you know what's going on with the -- you know, early
7 on in your investors in this relationship with Jon and Butch?
8 You were meeting every week. "Yes" or "no"?

9 A It was a thousand houses ago, Scott.

10 Q 500. 500 were redeemed. Let's look at I, Defendant's
11 Exhibit I. Realty or Kathleen was paid \$19,000, 150 --
12 \$19,155.95; is that correct?

13 A No, it's not.

14 Q Oh, I'm sorry. Thirty percent of that, so \$5,746.64.

15 A That's correct.

16 Q Expenses in line, happy with?

17 A These expenses are absolutely fine, yes.

18 Q So insurance is okay in this one?

19 A Yes. It was a flip.

20 Q All right. How many days do you determine if it's a flip
21 or a rental?

22 A I don't understand the question. Sorry.

23 Q How many days do the defendants have to own it before --
24 for you to make this determination if it's a flip or a
25 rental?

1 A I don't determine whether they flip it or rent it. They
2 determine that.

3 Q So you talked with Jon, Butch, Adam and discussed
4 expenses, profit splits regarding rentals?

5 A Early on, yes.

6 Q So you told them that if they rehab a house and they rent
7 it, they don't -- that's not part of the cost, the profit
8 split? Doesn't come off the net at the end?

9 A If you're fixing it to rent it, those costs don't come
10 off at the end. If you're fixing it to flip it, those costs
11 do come off.

12 Q And this was crystal clear to them, always part of your
13 deal with them?

14 A Always part of the deal with them and everybody else.

15 Q Does the deal ever change?

16 A I don't know. I'm not sure.

17 Q Does the -- do you ever negotiate terms in the investor
18 program?

19 A I'm not -- I don't understand what you're trying to ask
20 me.

21 Q Do you negotiate the terms of the investor program with
22 any investors?

23 A There's been a few times, yes, that we've done something
24 where we would say, okay, instead of a -- that house is --
25 we're paying 200,000 for it. It might be worth 400.

1 Investor might say, "All right. I'll do this one. Can we
2 make it 35 percent instead of 50 percent?" Yes. We'd do
3 some of that for sure.

4 Q And you did a lot of things different with Jon and Butch
5 and the defendants; is that correct?

6 A For sure. They had the best deal. No one else has ever
7 had a deal like they've had, yes.

8 Q Why is that?

9 A I was just getting started trying to take care of my
10 family and trying, you know, to --

11 Q You were desperate?

12 A Yeah. That's -- I was. I was desperate.

13 Q You needed them to help you survive; is that true?

14 A I did. I needed them and others to survive for sure.

15 Q And they were one of the first people you dealt with?

16 A Yes, they were.

17 Q And we've already discussed the acquisition fees. I mean
18 that's a principal part of your program; is that correct?

19 A We get an acquisition -- we're entitled to \$5,000 when we
20 buy a property for an investor, yes.

21 Q And in the defendants' case, that 5,000 was split at the
22 time of the sale and/or when it vests and/or whenever it was
23 paid?

24 A That's correct.

25 Q And then the next part of the deal with the sellers --

1 with the defendants was the seller's fee?

2 A That's correct, \$5,000.

3 Q And then they got interest on any money they invested.

4 A On the flip properties, yes.

5 Q So they didn't get anything on the rentals?

6 A No.

7 Q So they shouldn't have got interest on the Antonia
8 property if it was rented; is that correct?

9 A If it was only rented for a couple months, I don't call
10 that putting it in his rental. I mean Antonia I told you the
11 interest was fine, so if we rented it for a couple months,
12 that was just to get to the closing. That wasn't they were
13 going to make it a rental property. There's a difference in
14 a short period of time and renting something for a year or
15 two.

16 Q Early on in the program, however, you testified that you
17 didn't expect anyone to rent.

18 A No. I didn't think -- maybe I was so financially
19 desperate myself that -- I had no money -- that I thought
20 other people were the same, and it turned out I was in -- I
21 was completely wrong. There's a lot of very successful
22 people on the sidelines that have been doing this that
23 decided if they can rent a -- buy it for 40, rent it for a
24 thousand, that's a lot better than flipping it for 80 and
25 splitting 40 with me.

1 Q So you didn't know that at the beginning when you started
2 the program?

3 A No. In 2009 I thought -- I don't know. I was very, very
4 financially in trouble.

5 Q So how did you have that discussion with Jon and Butch
6 and -- regarding rentals if that was never part of the
7 thoughts of your program then and they were the first people
8 involved?

9 A Well, Ray was going to rent everything at the beginning,
10 too; right? Ray was going to rent every property. He was
11 never going to -- he has never --

12 Q But you just testified it was never part of your plan.

13 A I understand I testified it wasn't part of my plan, but
14 that is -- I've dealt with Ray for 30 years. That's how he
15 was going to do it. Jon and Butch told me they were in
16 the -- they were going to flip houses, but then you get to a
17 house -- to get the people to sign off on Irene, they would
18 sign off if they could lease it, so Jon and Butch said, yes,
19 let's do that. Let's make it a rental property. We'll take
20 the rent. And the numbers returned to Jon and Butch are
21 great. I guess we could have looked at doing the program the
22 other way. I could have split the rent with the investors.

23 Q But you didn't do that.

24 A No. We didn't do that, no.

25 Q And you didn't think about the rental aspect till after

1 the program was started, well after.

2 A Not well after. Within the first 30 days it was already
3 learning that there was going to be rental properties.

4 Q How is that? How is that possible?

5 A It is. Ray rented all his.

6 Q Within the -- but it doesn't --

7 A Maybe --

8 Q -- logistically make sense. If you started the program
9 on -- let's just pick a date. Let's just --

10 A May 19th of 2009.

11 Q Okay. So let's pick June 1st.

12 A Okay.

13 Q And you start tracking sheriff sales. How do you know
14 within 30 days then that people aren't going to flip? The
15 redemption period is six months long.

16 A From communicating with people, and we get people to sign
17 off. And knocking on the doors starting on June 1st of 2009,
18 people were wanting to stay in their houses, so the people
19 would sign off. If they were paying 2,000 a month, they
20 couldn't afford it. They would say, "Hey, I'll agree to pay
21 a thousand a month for two years or five years or three
22 years, and I'll sign off the property," so that was a trade-
23 off. That's what happened. We could get more people to do
24 the cash, sign off their house, if they could stay in it at
25 an affordable payment.

1 Q Okay. But that doesn't really answer how, when you only
2 had Ray and Jon -- and you said Jon and the defendants were
3 going to flip houses, and --

4 A Um-hmm.

5 Q -- Ray you knew what he was going to do, and he's never
6 paid you anyways --

7 A Um-hmm. When I first started the program, I was the
8 one --

9 Q How did you have this discussion with --

10 A Because I knocked on every single door. I talked --

11 Q But how did -- let me finish. How did you have this
12 discussion with Jon and Butch and the defendants about rents
13 if that was never part of the program when you were meeting
14 with them?

15 A It was never part of the program on May 19th of 2009.
16 Started buying properties June 1st of 2009, was knocking --

17 Q Who was buying properties June 1st?

18 A I started finding properties to buy on June 1st, 2009.

19 Q When was the first property bought?

20 A I think it might have been on that day.

21 Q So the first -- so was --

22 A June 1st of -- yeah.

23 Q We know it wasn't the defendants.

24 A It wasn't. It was Ray.

25 Q So Ray started buying properties June 1st, 2009?

1 A Yes. Ray would go with me to the doors. We would knock
2 the doors together. As soon as I was -- that was right at
3 the beginning of the program -- hearing what people were
4 saying, what the homeowners were saying --

5 Q Did Ray ever have any dealings with the defendants that
6 you're aware of?

7 A Yes.

8 Q Regarding the investor program?

9 A No. Ray did work for Jon on his building down on
10 Groesbeck.

11 Q So he was like a contractor?

12 A Yes.

13 Q But he wasn't -- Jon and the defendants, they didn't have
14 a relationship regarding the investor program. They were --

15 A Well, that's not what you asked me, though.

16 Q Right. I'm asking you something different now.

17 A Yeah.

18 Q So they had no dealings within the investor program?

19 A I don't understand. Can you repeat, please?

20 Q Did Ray Confer and the defendants have dealings within
21 the investor program --

22 A I don't believe they had --

23 Q -- to your knowledge?

24 A They both are doing the same program, but I don't believe
25 they directly had worked together, not that I know of.

1 Q How much do you think the defendants owe you?

2 A Probably north of a hundred thousand.

3 Q At what time frame from -- strike that. Other than we
4 know that Duncan, Jimmy, Irene, and Teppert are unsold -- is
5 that correct?

6 A No, it's not.

7 Q Considering land contract as --

8 A That's not correct.

9 Q Okay. Irene and Teppert are unsold?

10 A That's correct.

11 Q Duncan and Jimmy are being sold pursuant to a land
12 contract?

13 A That's correct.

14 Q The other properties, Eastland, Engleman, Firwood,
15 Teppert -- I'm sorry -- not Teppert -- Trailwood, and
16 LedgeStone are the properties in question. We'll call them
17 the five.

18 A I don't think Eastland is because that was fully settled,
19 and they don't owe me anything on Eastland, and I don't owe
20 them anything.

21 Q That's your position.

22 A We settled a case in Circuit Court. We all agreed to it.

23 Q So if -- pardon me for one second. Just want to run
24 through a little chronology if that -- so Raymond was sold
25 and paid to you in -- let's call it May 28, 2010; is that

1 correct?

2 A Raymond was paid, and I'm satisfied with the number, but
3 I don't know when I got it, but there's no problem with
4 Raymond.

5 Q The date is kind of important, so let's take a look at
6 the date.

7 A I've got it open, but it doesn't have the date.

8 Q Well, if I want -- will you take a look at the
9 Plaintiff's Exhibit Number 2? There's a closing statement
10 for Raymond.

11 A Okay. Number 2, Plaintiff's Number 2. Okay. I got it.

12 Q Have you seen it?

13 A Yep. The closing date was May 28th of 2010. I was
14 supposed to get \$5,746.04, and I got that number, and this
15 file is fine.

16 Q So it was paid on or about the 28th of 2010; is that
17 correct?

18 A That's correct.

19 Q Lowell Court also paid -- I'll just use in 2010. Does
20 that work?

21 A Well, not if it closed in 2011.

22 Q Well, do you remember when it closed?

23 A I don't.

24 Q Okay.

25 THE COURT: Which one is this?

1 MR. KWIATKOWSKI: Lowell Court.

2 THE COURT: Thank you.

3 BY MR. KWIATKOWSKI:

4 Q It's Plaintiff Exhibit 4.

5 A It closed June 28th of 2010.

6 Q And then Foxcrest --

7 A Foxcrest.

8 Q -- which is Exhibit 5?

9 A Closed June 30th of 2010.

10 Q Duncan is being sold on land contract, so we understand
11 that. Antonio -- Antonia. That's Exhibit 3.

12 A Exhibit 3? Okay.

13 Q Yes.

14 A Antonia closed on 8-18, 2010.

15 Q Okay. And then we know that Eastland happened in 2011,
16 and I believe we'll just say that the case was settled.

17 A Okay. Yeah. That's correct. The case was settled.

18 Q And then we have Ledgestone, which closed -- it's Exhibit
19 7. I don't think there's -- do you remember when Ledgestone
20 closed?

21 A No. I was fired from taking care of that property, so I
22 don't -- I wasn't part of that closing.

23 Q Does around April of 2011 ring a bell?

24 A Yeah, because we bought it in -- December 11th of 2009.
25 They rented it for a year and a half. Yeah, that makes

1 sense.

2 Q And then there was the Trailwood, which sold in June of
3 2011?

4 A Yeah. Trailwood was bought May of 2010, rented to the
5 people to get them to -- and then -- yeah, that's correct.

6 Q And then Firwood was sold in August of 2011?

7 A Firwood. I wasn't part of that closing, but I'm looking,
8 trying to find it in your exhibits here.

9 Q So you would assume --

10 A I don't have anything in this exhibit that shows when it
11 closed, so --

12 Q August 2011?

13 A Don't know.

14 Q Would you have ever made a statement that -- in September
15 of 2011 that plaintiffs didn't owe you any money?

16 THE COURT: I'm sorry.

17 THE WITNESS: Can you repeat?

18 THE COURT: Repeat that question for me.

19 BY MR. KWIATKOWSKI:

20 Q Would you have made a statement that the defendants do
21 not -- did not owe you any money in 2011?

22 A Would I have made that statement? No, I would not have
23 made that statement.

24 MR. KWIATKOWSKI: Excuse me. I would like to mark
25 this as Exhibit T. I tried to find the other copy. I

1 thought I had two. I had them all here.

2 (Defendant's Exhibit T marked at 12:32 p.m.)

3 THE WITNESS: Thank you.

4 BY MR. KWIATKOWSKI:

5 Q Mr. Roberts, take a look at Exhibit T --

6 A Okay.

7 Q -- the second half where it says "Ralph Roberts to Butch
8 Hassig, cc: Jon Savoy," says, "Butch, sorry about the
9 confusion. I appreciate you getting back to me. The
10 outstanding monies owed cleaned up when we met. That's what
11 we said was going to be done." And that's dated September
12 27, 2011. Does that mean that as of that date you didn't owe
13 the -- the defendants owed you no money?

14 A No. That's not what it says.

15 Q What does it mean?

16 A Jon -- Butch contacted me. He said that -- I was telling
17 him I appreciate him getting back with me. The
18 outstanding -- he told me he would look into getting the
19 outstanding monies cleaned up and that what we said he was
20 going to be done. Jon told me he would have everything to me
21 within ten days before closing. I'm also telling him the
22 last two closings I've not received anything in advance, so
23 I'll wait to hear back from you once you go over everything.
24 It's not saying that there's no money owed.

25 Q Doesn't it say, "the outstanding monies owed cleaned up"?

1 A I didn't type this e-mail, but that's not -- you know,
2 it's not what the intent of this e-mail is.

3 Q What was the intent?

4 A To tell Jon to tell Butch thanks for contacting me, but
5 he would get with his -- Jon took care of all the money.
6 Butch didn't. So we were --

7 Q Sounds like the money was taken care of right here. It
8 says all the outstanding money was cleaned up.

9 A Doesn't say all the outstanding money was cleaned up. It
10 doesn't say that.

11 Q "The outstanding monies owed cleaned up when we met."
12 That doesn't mean you were paid?

13 A Does not.

14 Q What does it mean then?

15 A It means Butch was going to look into getting the
16 outstanding monies taken care of. That's what this means.

17 Q So -- okay. So "cleaned up," and, "That's what we said
18 was going to be done," doesn't mean payment?

19 A That's correct. There was no payment made. That's not
20 what this is saying, and you know --

21 Q Does it mean that they provided you with the fact that
22 there were losses and that there was no money owed so you
23 weren't entitled to any money?

24 A You know they never provided that. We just got stuff
25 with made up numbers.

1 Q I don't know what they provided you.

2 A They never provided that.

3 Q They never told you they were losing money on properties?

4 A Never. They never lost money when they were
5 communicating with me. We made money on every house I took
6 care of. They lost money because --

7 Q That's not exactly true, though.

8 A It is true.

9 Q Just let me finish. Don't interrupt. You picked out
10 the --

11 THE COURT: Excuse me. Mr. Kwiatkowski, you're
12 interrupting the witness.

13 MR. KWIATKOWSKI: Sorry.

14 THE COURT: You've done that several times. You let
15 him finish his answer, and, Mr. Roberts, then you let him
16 finish his question before you talk.

17 THE WITNESS: Yes, sir.

18 THE COURT: Now, let's both clean that up a little
19 bit.

20 MR. KWIATKOWSKI: Sorry, your Honor.

21 THE COURT: Mr. Kwiatkowski, go on with the
22 question.

23 BY MR. KWIATKOWSKI:

24 Q Not exactly true, though. You picked the properties that
25 they purchased; isn't that correct?

1 A No, it's not.

2 Q Did you advise them as to which properties to purchase?

3 A No, I did not.

4 Q So how did they know which properties to purchase?

5 A I would send them, say, ten properties. They would
6 decide which ones they'd go by. They would then report back
7 to me on which ones they wanted to go for is how our program
8 works.

9 Q So you didn't sit down with them and explain which one
10 was a good deal or which one was a bad deal or this had the
11 best upside?

12 A When we would sit down, we might have ten properties.
13 They might be willing to bid on one for that week or two for
14 that week. We would go over the ten opportunities. Jon has
15 got 30-plus years experience in real estate, too. Butch has
16 got experience in real estate investing. They were very
17 active in making their own decisions of which ones they were
18 going to bid on.

19 Q But you're the one -- you or your entity is the one that
20 provided the opportunities?

21 A We would find the ones that they should consider, yes.

22 Q And then you would discuss which ones had the greatest
23 upside?

24 A Sometimes we would if we met on those weeks, yes.

25 Q And you would tell them the facts and the due diligence

1 you had done on the properties that made them even better
2 deals?

3 A We'd try to be -- get as much information on each
4 property as we possibly could, yes.

5 Q So you picked the properties from your -- they pick --
6 strike that. The defendants picked the properties they
7 purchased from the list you provided. Is that accurate?

8 A Yes.

9 Q So the testimony is that they always made money on the
10 properties I chose. That's not exactly true.

11 A They always made money on the properties that I was
12 involved in until they fired me from being the real estate
13 broker. Every property -- as you look at the closings, every
14 property was profitable. Jon then fired me as the real
15 estate broker. Then all of a sudden every property is not
16 profitable.

17 Q But those properties they owned prior to you being fired.

18 A Right.

19 Q Is that because you weren't doing your job?

20 A Absolutely not.

21 Q So things were going great, and they owned all of these
22 properties, so isn't it an easy -- isn't it clear that the
23 easy properties you sell fast? The easy flips, those are the
24 ones you do right away. Isn't that normally how it goes?

25 A I've never -- I'm not sure what you're asking of that.

1 That's not how I think about it. I don't know what an easy
2 flip would be. I don't think any of them are easy. They all
3 take work.

4 Q Understandable. You were fired when?

5 A I don't know.

6 Q All the properties were owned before you were fired;
7 isn't that correct?

8 A Correct. We took them off the list for -- we quit
9 sending stuff to them for future transactions.

10 Q Is it possible that they fired you because they were
11 unsatisfied with the properties that they purchased?

12 A They never said that, not once. There's other investors
13 that would have taken them. They never said, "Hey, can I --
14 can you take this property back?" They never once complained
15 about a property until they decided not to pay me. Now
16 they're complaining about properties because they want to
17 manipulate the numbers so they don't have to pay Ralph
18 Roberts Realty.

19 Q Or that you provided properties that were not profitable?

20 A Not correct.

21 Q You never put up any cash to purchase the houses for the
22 defendants, did you?

23 A Not to purchase, but I put up cash to pay expenses for
24 them.

25 Q So all the money -- they were the owners?

1 A Yeah. The investors in my program, they put up all the
2 money.

3 Q The defendants put up all the money?

4 A No. All investors, including the defendants, put up all
5 the money.

6 Q And the defendants can choose whether to sell a property,
7 hold a property. Realty has no say into what their decision-
8 making is; is that correct?

9 A That's correct.

10 Q And Realty can't make them sell a property; is that
11 correct?

12 A That's correct.

13 Q On a land contract sale, when is Realty owed the money?

14 A If we take Duncan as an example and our part -- let's say
15 it's 60,000 profit, and we should get 30 percent of that, so
16 let's say 18,000. We should get the -- when the balance of
17 the land contract gets to 18,000, they should pay us in cash
18 or sign the balance of the land contract payments to us
19 because that's what we're owed.

20 Q So you're due 30 percent of the balloon payment, in
21 essence?

22 A No. I'm -- no, because you can't go by the balloon
23 payment because they could pay down, and there could be no
24 balloon payment. I'm owed the difference in what we paid for
25 it and what it sold for. This thing sold for 89,000. We

1 paid 24 for it. So there's commissions and things, some
2 costs in there, but I'm entitled to the difference, 30
3 percent of that difference, which I believe is about \$60,000.

4 Q Did you personally do the follow-up with the defendants,
5 or did you have your office do it?

6 A On what? Follow-up on what?

7 Q Showings, rentals, any type of follow-up. Was it handled
8 by you or by your office?

9 A It was handled by me and my office, but every listing
10 would have a listing person that would help with it, and they
11 would do the task of listing it, MLS, getting that stuff
12 done.

13 Q Other than the defendants and Ray Confer, what other --
14 how many other investors did you have in 2009?

15 A I don't -- not very many, but I don't know the number.

16 Q Well, five?

17 A I really don't know the number.

18 Q Ten? No idea?

19 A I don't know the number.

20 Q Today you have how many?

21 A About 50.

22 MR. KWIATKOWSKI: I have no further questions.

23 THE COURT: All right. Thank you. Before --

24 Ms. McCollum, I assume you're going to have some redirect or
25 not?

1 MS. MCCOLLUM: Very brief, yes.

2 THE COURT: Yeah. How brief do you think? We're
3 going to take a lunch break, but if it's going to be brief,
4 we can --

5 MS. MCCOLLUM: About five to ten minutes.

6 THE COURT: All right. Let's see if we can get
7 that -- get Mr. Roberts finished testifying at this stage
8 before we have lunch. Go ahead.

9 MS. MCCOLLUM: Thank you, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. MCCOLLUM:

12 Q When you talk about the houses in Ralph Roberts Realty's
13 investor inventory, are those properties subject -- are any
14 of those properties subject to redemption?

15 A Yeah. Some of them could be, yes.

16 Q So if you said that the inventory is 500 houses at any
17 given time, some of those are subject to redemption?

18 A They could be, yes, for sure.

19 Q So of those 500 houses, not all of them are, quote,
20 eligible for split?

21 A Correct. They got to -- the ones that are still in
22 redemption have to go through redemption before you can
23 determine if you're going to split or rent.

24 Q When you talk about losses, are you talking about an
25 investor's expenses with respect to a property, or are you

1 talking about a loss of principal?

2 A The whole thing is to protect their principal, protect
3 their principal to make sure they get their principal back,
4 so anytime we're talking about losses, we're talking about
5 principal, getting their principal back to them.

6 Q Not expenses associated with the property?

7 A I don't know. The expenses could be part of the
8 principal if they wrote checks for certain things. As long
9 as it wasn't rented and there wasn't other cash flows on it,
10 they would be entitled to that as part of their principal,
11 too.

12 Q To discuss your investor program, when you send your
13 standard form e-mail, what is typically included in that e-
14 mail when Realty sends that e-mail to investors?

15 A Picture of -- multiple pictures of the property, Google
16 map so they can see where it's at, three bedrooms, two
17 bedroom, basement, garage, people's name that's losing it in
18 foreclosure, and whatever information we have right then, and
19 then there's always follow-up because you don't have all of
20 it done. You want to get it out in front of them so they can
21 get out and look at it themselves.

22 Q How many investors typically respond with respect to any
23 individual property?

24 A Two to ten depending on where it's at and what its
25 opening bid is.

1 Q If a property is going to foreclosure sale but there's a
2 tax foreclosure, what kind of -- tell me about the
3 interrelationship there.

4 A Each year in March you could lose a property if you don't
5 pay taxes from three years ago, so it's something that we
6 have to watch as part of the cost of buying the property,
7 what the investment is going to be, but we can't have the
8 taxes not get paid and then you lose a property, so we advise
9 our investors to pay the taxes, get us the receipt, or let us
10 pay them for you, and then we'll record the affidavit
11 attached to the sheriff deed so you would get your money
12 back.

13 Q If a property is redeemed, does the redemption -- does
14 the person paying the redemption in that situation also have
15 to pay for the taxes that were paid?

16 A They have to pay the principal, taxes, insurance, and
17 interest on those three items back to the investor.

18 Q Did the defendants do drive-bys on all the properties
19 that they bought?

20 A They did for sure.

21 Q How many former investors have you sued?

22 A I think it's three. There's four total. There's four
23 total with this group here.

24 Q Even the ones we settled with? Were there more?

25 A Oh, I'm not counting those. The four, yeah.

1 Q So it is true that you pursued more investors than the
2 Savoy defendants?

3 A Absolutely. After I filed bankruptcy, it seems like
4 people thought they didn't have to honor their agreement with
5 me, their verbal agreement if it's just verbal.

6 Q And what steps are you taking going forward to ensure
7 that investors in your program live up to their commitments?

8 A Having them -- having signed agreements and as we do
9 things everything -- more of a paper trail with them,
10 receipts and what they owe and so there's no questions later
11 on.

12 MS. MCCOLLUM: I have no further questions.

13 THE COURT: Any recross, Mr. Kwiatkowski?

14 MR. KWIATKOWSKI: No, your Honor.

15 THE COURT: All right. Thank you, Mr. Roberts. You
16 may step down.

17 (Witness excused at 12:49 p.m.)

18 THE COURT: At this point, we'll take a lunch break.
19 I have 12 -- I have ten minutes to one as the current time.
20 We'll resume in one hour at ten minutes to two. Thank you.

21 THE CLERK: All rise. Court is in recess.

22 (Recess at 12:49 p.m., until 2:00 p.m.)

23 THE CLERK: All rise. Court is back in session.
24 You may be seated.

25 THE COURT: All right. Good afternoon, everyone.

1 Ms. McCollum, your next witness for plaintiff.

2 MS. MCCOLLUM: I'd like to call Ray Confer to the
3 stand, please.

4 THE COURT: All right.

5 RAYMOND A. CONFER, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: If you can take a seat and state and
7 spell your name for the record, please.

8 THE WITNESS: Thank you. My name is Raymond A.
9 Confer, R-a-y-m-o-n-d A. C-o-n-f-e-r.

10 THE COURT: All right. Good afternoon, Mr. Confer.

11 THE WITNESS: Good afternoon, your Honor.

12 THE COURT: Go ahead, Ms. McCollum.

13 DIRECT EXAMINATION

14 BY MS. MCCOLLUM:

15 Q How long have you known Ralph Roberts?

16 A Ralph Roberts, about 30 years.

17 Q What do you do for a living?

18 A I do contract sweeping, shopping centers, office
19 buildings.

20 Q Are you also a real estate investor?

21 A Yes.

22 Q Are you a real estate broker or real estate professional?

23 A No.

24 Q How long have you been investing with Ralph Roberts
25 personally, not his company, just Ralph?

1 A With Ralph I did -- well, actually probably '84 is when I
2 probably did my first deal with Ralph.

3 Q Have you been --

4 A 1984.

5 Q Have you been investing with Ralph ever since then?

6 A We did some back then. Then the market went a little
7 crazy, and then probably 2009 is when the market was -- time
8 to do it again.

9 Q Were you involved when Ralph started his investor program
10 in 2009?

11 A Yes.

12 Q Tell me about that.

13 A 2009 Ralph called me. It was after his daughter passed
14 away, and I'd been trying to get ahold of him for probably a
15 couple years. And he finally called me and says, "Hey, I
16 want to talk to you about some investing," so I went and
17 talked to him. He came up with this idea about buying
18 foreclosures at a discount price and that he would do the
19 work of groundwork of getting the properties, go to the
20 sheriff sale, which I'm not that good at, so it worked out
21 pretty good, and that's what we did.

22 Q Were you one of the first investors?

23 A Yes.

24 Q Do you know when that program started?

25 A I want to say maybe sometime in June of 2009 maybe.

1 Q Are you a current investor with Ralph Roberts Realty?

2 A Yes.

3 Q How many properties have you purchased through this
4 investor program?

5 A From Ralph, probably 38, 39, somewhere in there.

6 Q Have you ever had a property redeemed? Have you ever had
7 a homeowner redeem a property that you tried to purchase?

8 A Yes.

9 Q How many times has that happened?

10 A Percentagewise?

11 Q Is it common or is it not common?

12 A Sometimes it's 50-50, you know, all depends. We're home
13 savers. If the people can save their home, that was great.
14 If they didn't, then we stepped in and helped them, and a lot
15 of times I'd just rent it back to them.

16 Q What are the terms of Ralph's investor program?

17 A For his program, he does all the legal work. He goes to
18 the auction, sheriff sale, and we put up the money for the
19 house. You have to have cash the day of the auction. He
20 does a split with us that we take the house, and for me, my
21 thing, I rent my houses out. I don't actually -- I don't
22 flip them because I don't want the income on it, and I want
23 to wait till the market goes up, so he would take 50 percent
24 of the sale price of the house.

25 Q Does the investor program have an acquisition fee?

1 A Yes. It's \$5,000 per house that we have to pay above and
2 beyond the cost of the sheriff sale.

3 Q Do you know why Ralph Roberts Realty charges that \$5,000?

4 A Yes. And as I explained to people that I brought into
5 the group, he's got probably a dozen people in his office
6 that they research and research and research. And there's a
7 lot of prep work that's done before behind the scene to get
8 the property, so that's kind of like awash really in my eyes
9 because he's got his overhead and he's got his bills. And
10 some people can't see that, and I tell them the program is
11 not for you.

12 Q Do you know if there's a commission piece to the program?

13 A Sorry?

14 Q Do you know if there's a commission piece to the program?

15 A Commission piece? What do you mean?

16 Q Meaning if an investor sells the property, do they owe
17 Ralph a commission? How does that work?

18 A If the investor sells the property, if he's flipping it
19 right in the beginning, if an investor flips the property
20 right in the beginning, you fix the house up, and all the
21 bills you put into it will come off of the sale, and Ralph
22 would sell the house for us, and we split the commission on
23 it -- we split the profits from the house.

24 Q Do you -- when you are --

25 A Did you want -- the second part is if you rent, like I

1 do, you fix the house up, and all the bills that go into the
2 house, that's your responsibility. And I usually -- I rent
3 them out I want to say from five to seven years before I try
4 to flip them, and then I'm just responsible about it, but I
5 get all the rent. I get all the rent from it then.

6 Q On a flip situation, though, an investor can credit off
7 expenses against the split?

8 A Yes, yes.

9 Q But not in a rent situation?

10 A Not in a rental, no.

11 Q Why?

12 A Well, in a rental, when you rent it, example, you rent it
13 for a thousand dollars, which is probably the average rent,
14 and you rent it for, say, five years. You get 60,000 back.
15 And say you paid 30,000 for the property, you got income that
16 he don't touch, and you get to keep it. And then at the end,
17 then when you sell it you just split it then.

18 Q So that property that you were just talking about, say,
19 you bought it for 30 --

20 A Um-hmm.

21 Q -- you rented it for five years, and you got 60 for the
22 rental --

23 A Yeah, 60,000.

24 Q -- and then you sold it for a hundred, what would you owe
25 to Ralph on a split?

1 A If I --

2 Q If you bought it for 30 and sold it for a hundred but you
3 got 60 in the middle in rent, what would you owe to Ralph?

4 A Well, you take the 30 from a hundred, so that would be
5 70, and you split that.

6 Q Okay. No expenses or anything?

7 A Not if you flip, no.

8 Q Not if you rent, you mean?

9 A Oh, if you rent. I'm sorry. Yes.

10 Q Okay.

11 A Not if you rent.

12 Q Of your properties, of the 38 or so that you own, how
13 many of them are currently rental properties?

14 A All of them.

15 Q Have you ever split a property -- have you ever sold a
16 property such that you owe a split to Ralph?

17 A Not yet, not yet. I'm waiting for the market to go up.

18 Q Tell me about how Ralph Roberts Realty notifies you as
19 one of its investors of potential property opportunities.

20 A For buying a house?

21 Q Yes.

22 A There's an e-mail that goes out to everybody at the same
23 time, and the first-come, first-serve -- whenever you see e-
24 mail, you go on a list. You can be one, two, three, four on
25 a list, and then if you're on the list, when they do the e-

1 mails like that, you have to come up with an overpayment, say
2 an overbid, it would be called. So if someone wanted to bid
3 5,000 overbid, then -- and if you're the first guy and you
4 don't want to bid any, so if it's in the -- because the
5 auction goes as an auction, so right away if you don't want
6 to bid any and somebody else starts bidding it, that means
7 the second person has got the option. And if you only wanted
8 to go five and it goes past the five, then the next person
9 that may want to go seven would get it then. And then when
10 we have our meetings, typically the e-mails go out for
11 Oakland County and stuff like that, but when we have our
12 meetings, we have -- we have a box that goes around, and you
13 put your hand in. You pull a number out for the house, and
14 whoever has the highest or lowest number -- they switch back
15 and forth -- will have first right on the house.

16 Q Is there any situation where an investor would be given
17 an e-mail about a particular property before any other
18 investor got it?

19 A No, no. It goes out to everybody. I think that they
20 just push a button. It goes out to everybody.

21 Q Has this been the case since the program was started in
22 2009?

23 A Well, in the beginning there was just me. There was just
24 me in the beginning, and we did -- it was like a test
25 program. I already had a fair amount of houses. I was just

1 trying to help Ralph out a little bit, so -- because I had a
2 lot of investors that wanted to do real estate but didn't
3 know how to do real estate, were scared to get into it, and
4 you were buying 20 cents on a dollar stuff. It was like a
5 no-brainer to get into it then, so --

6 Q Have you ever had a loss on a house?

7 A A loss on a house?

8 Q A loss.

9 A No. I never sold one, so I never had a loss. I mean --

10 Q Have you ever put more money into a property to fix it
11 than you paid for it?

12 A There was only one property, but I bought it right, and I
13 know I could sell it for three times as much. And it had a
14 little mold, and I went to the point where I just decided to
15 gut the property, but I get 1,595 a month rent for it now, so
16 I get my money back, and I'll get it when I sell it, so --

17 Q Did you know about the problems when you bought the
18 house?

19 A Yes.

20 Q Did Ralph or his company tell you about them?

21 A I could see through the window, you know, of what it was,
22 so -- and typically some pipes broke, busted. I mean that's
23 usually what happens, you know, but drywall, repair the
24 pipes, and this one here was sitting for awhile, though.
25 This one was sitting, plus I had a year redemption, so --

1 which was tough on me, so --

2 Q Do you normally do a drive-by visit to properties before
3 you buy them?

4 A Um-hmm.

5 Q Always?

6 A Well, not always, no, no. I shouldn't say always. No.
7 When I can, I do. Typically, if the price is right, I mean
8 you can look at the picture, and if -- usually if the outside
9 is fairly nice, the inside is fairly nice. That's how it
10 usually goes, so -- and some you just don't have time to look
11 at, but when you're buying 20, 25 cents on a dollar, all
12 you're doing is going in there and putting make-up on them,
13 so --

14 Q How long does it take you to re-rent -- to rent a
15 property after you've bought it?

16 A After I bought it, probably -- I could probably flip them
17 in a month, month and a half probably, a month, all depending
18 on how many I get at one time. You know, if I get --
19 sometimes you get two, three at a time, so --

20 Q And what typically do you have to do to make a property
21 rentable?

22 A We go in, and we -- well, I mean there's some I just do
23 the carpet, clean the carpet and rent. I mean some are like
24 that. And then you get some you have to go in, you got to
25 replace the carpet, a couple other minor things, and then

1 there's other ones where you have to go in. There's holes in
2 the drywall. Typically it's just drywall repair. You paint,
3 put new carpet in, and you just put make-up on it.

4 Q Is there anything you can tell me on average about the
5 houses you buy? Are they generally in good shape, generally
6 in bad shape, or is it just all over the place?

7 A Generally they're in decent shape where you -- I mean to
8 me holes in the wall, that's no big deal. Drywall can do
9 wonders, and it doesn't take that long, so that's basically
10 what it is.

11 Q Do you -- when you receive an e-mail from Ralph's
12 company, is that the information that leads you to want to
13 make a bid on a house?

14 A Yes.

15 Q Do you do other independent investigation?

16 A Such as?

17 Q You already said you sometimes drive by the houses. Do
18 you ever look them up on the Internet, on Google streetview,
19 or anything like that?

20 A Oh, we sometimes Zillow them and see if they're -- and
21 sometimes the SEV is on there. It gives you a pretty close
22 idea. But, again, if you're buying them, you know, 25
23 percent of the market, that gives you a good gauge of where
24 you're at.

25 Q Do you concentrate on any particular area when you buy

1 properties?

2 A No.

3 Q How do you know -- strike that. Is there an average
4 amount as a percentage that you would spend to rehab a house?

5 A An average? I would say probably from 20 percent to
6 maybe 40, 45, 40.

7 Q Do you think it's possible to lose money in Ralph Roberts
8 Realty's investor program?

9 A Not if you're buying it right. I mean I bought stuff
10 before he was -- he come about, and I was buying like 50, 55
11 percent, which I thought I was doing good, and then with his
12 program at 25, 30 percent, it was like a no-brainer.

13 Q Do you know of any investors other than these defendants
14 who say they've lost money in Ralph's investor program?

15 A No, and I brought in probably 30 guys, probably 25 guys,
16 doctors, different people.

17 Q Has anybody that you have brought in ever told you that
18 they're unhappy with Ralph's program?

19 A No.

20 Q Do you know if anybody has ever tried to negotiate a
21 different deal than the investor program you described?

22 A Am I aware of any deals? No, no.

23 Q Do you know what Realty's deal with defendants was?

24 A No.

25 Q What's the normal split percentage?

1 A Fifty percent.

2 Q Turn in the book that's got the numbered exhibits -- if
3 you could turn to Exhibit 7, this is a property at 36403
4 Ledgestone. You don't own that property, do you?

5 A No. I never heard of it.

6 Q Have you ever seen this calculation spreadsheet or
7 document before?

8 A Yes. I saw it yesterday.

9 Q If this was your house, what would you -- what's your
10 opinion of the expenses and the list of expenses that are
11 listed on here against defendants' costs?

12 A Let's see. If you buy it for 23,5, is that what --

13 Q Um-hmm.

14 A Okay.

15 Q Um-hmm.

16 A For me I would never put that much into a house. I never
17 have put that much into a house. Are these rentals, or are
18 these flips? It really doesn't matter, but --

19 Q This house was rented.

20 A Yeah. They seem high.

21 Q If this was a rental house, are any of these expenses
22 entitled to be deducted against the split?

23 A Let me just make sure. The acquisition fee -- see, we
24 paid 5,000, so this is 2,500. That would come off the split,
25 the acquisition.

1 Q Nothing else?

2 A If you're flipping, you said, or --

3 Q No. If this is a rental.

4 A A rental? Yeah. Everything else -- everything else is
5 included.

6 Q And why isn't -- why are none of the other expenses
7 included if it's a rental house?

8 A Well, typically you got income coming in, and Ralph
9 doesn't get any of that, so we get that. If we rent it for
10 five years and if it's a thousand a month, you get 60,000, so
11 there's a little pain in the beginning, but through the year
12 you end up making money off it because you end up taking
13 60,000 in where you only put so much into the house.

14 Q Did Ralph explain the terms of the investor program to
15 you?

16 A Yes, yeah.

17 Q And did he explain the rental versus flip concept?

18 A Well, at first he wanted everybody to flip a little bit,
19 and I'm not a flipper, so I told him I'm not going to flip.
20 I'm just going to rent. And that's when he decided to do two
21 different programs, you know, for that, so --

22 Q He did explain the credits?

23 A Yes.

24 Q Okay.

25 A Everybody gets -- you know, when they come into the

1 club -- group -- if I brought a person into the group, I
2 would explain it to them, and then I would have them set up a
3 special meeting with Ralph to -- so they can understand
4 everything, so I would just bring investors in. The people
5 that I knew and I wanted to help -- and most of them were my
6 friends in real estate that -- then I'd have them go talk to
7 Ralph to make sure they understood everything a hundred
8 percent.

9 Q But for the people you bring in, you do explain the
10 program as well as having Ralph explain the program?

11 A Oh, absolutely, yeah. And then they come to a couple
12 meetings if they want, you know. I just tell them if you
13 want to come to a couple of meetings, you can come. It's
14 just ordinary guys that, you know, want to invest. It's not
15 a -- it's like a no-brainer operation, you know, so --

16 Q And you explain the difference between what happens when
17 an investor rents a property versus flipping it immediately?

18 A Yes, yeah.

19 Q Turn to Exhibit 9 in that same book. And as you can see,
20 Exhibit 9 is numbered at the bottom. Starting on Exhibit 9-
21 11, there's a residential lease agreement for this property,
22 which is 29179 Trailwood. You don't own this property, do
23 you?

24 A No.

25 Q And you have no interest in it?

1 A Never heard of it.

2 Q If it's a rental, tell me about these expenses. Would
3 any of them be allowable?

4 A The acquisition is the only thing if you rent or if you
5 do a land contract, which is the same thing as renting.

6 Q Turn to Exhibit 10. This is a property, 7376 Engleman in
7 Center Line. If you look down --

8 THE COURT: I'm sorry. I missed it. Exhibit what?

9 MS. MCCOLLUM: I'm sorry. Exhibit 10.

10 THE COURT: Thank you.

11 BY MS. MCCOLLUM:

12 Q According to this exhibit, what was the acquisition price
13 for this property?

14 A 17,000 looks like 626. My monovision is tough.

15 Q If you go down on the list of expenses to repairs and
16 maintenance, what's the amount that defendants allegedly
17 spent on repairs and maintenance?

18 A 36,901.40.

19 Q That's the total at the bottom. If you go up to the line
20 item for repairs and maintenance --

21 A Oh, for repairs. I'm sorry. Okay. 18,675.27.

22 Q You don't own this property; correct?

23 A No.

24 Q You have no -- you have no interest in it?

25 A I don't even know where it's at.

1 Q Is there ever a situation where you would spend \$18,000
2 on a property that you bought for \$17,000?

3 A There's only one time I spent money that I paid -- I
4 think it was 35, and I probably put 35 into it, but the
5 property was worth a buck and a half, so that's the only
6 time, and I gutted the house. I mean I just totally gutted
7 it, but I would never put that kind of money into a -- in
8 this area.

9 Q If you had put that kind of money into it, would you have
10 sold it for \$28,000?

11 A I wouldn't. I don't know the market in -- I mean I
12 wouldn't -- I wouldn't, no, no. It's -- no, I wouldn't.

13 Q Would you have rented it instead?

14 A Yeah, yeah. You could recoup your -- I would imagine in
15 this area you could probably get 900 to a thousand, 850 to a
16 thousand rent over five years, and you could -- and then
17 the -- really, you keep the house, and by that time the house
18 goes up in value, too, so that's another way that -- when you
19 don't -- when you rent them that you can make money on the
20 house at the end when you sell them in the end. The market
21 goes up.

22 Q Have you ever had a tenant that you had to evict?

23 A Yes.

24 Q Do you do it yourself, or do you have Ralph Roberts
25 Realty help you?

- 1 A I have Ralph Roberts Realty evict them. We use a guy by
2 the name of Robert Novak, and we just hand it to them, and
3 they evict them. If the rent is not there on the third day,
4 I start evictions right away, and I get a month and a half
5 security deposit, so I don't let them get into me.
- 6 Q Do you -- who pays for that eviction?
- 7 A I do.
- 8 Q You don't charge it against the --
- 9 A No.
- 10 Q -- acquisition -- I'm sorry -- not the acquisition fee,
11 the split?
- 12 A No, no, because I collect rent for the place, so I have
13 income coming in. I don't share the rent with anybody.
- 14 Q What about taxes? Are you responsible for taxes?
- 15 A Um-hmm.
- 16 Q Is there anything that you're not responsible for other
17 than the acquisition fee?
- 18 A No. Pretty much that's just it, acquisition fee, but
19 ours is 500 -- 5,000.
- 20 Q Do you -- are you paid interest on any of the properties
21 that you purchase through Ralph?
- 22 A Paid interest?
- 23 Q By Ralph Roberts Realty.
- 24 A Paid interest? What do you mean?
- 25 Q If you were to sell a property, would you get any kind of

1 credit for interest, or would you receive a deduction to the
2 split you owed Ralph for interest?

3 A No, because we go in with cash. We buy it with cash,
4 like I said earlier. You buy it with cash, and you go in
5 there, and that's your cash.

6 Q So you can either invest it with Ralph, or you can do
7 something else with it?

8 A Right; right.

9 MS. MCCOLLUM: I have no further questions.

10 THE COURT: All right. Mr. Kwiatkowski.

11 CROSS-EXAMINATION

12 BY MR. KWIATKOWSKI:

13 Q You started in the program with Realty in June of 2009;
14 is that correct?

15 A In Ralph's program, yes.

16 Q Correct. How many houses since June 1 of 2009 have you
17 purchased?

18 A Probably about 38 of them.

19 Q And those are all within the program?

20 A Yes.

21 Q And you paid an acquisition fee on each one?

22 A Yes, I did.

23 Q Do you have any personal knowledge of the deal that the
24 defendants had with the plaintiff?

25 A No.

1 Q Do you know if it was the same deal that you have or
2 different?

3 A No. I have no idea what the difference -- I mean I paid
4 5,000 acquisition. This is only 2,500.

5 Q So it's possible that the defendants' deal was vastly
6 different than the deal you've explained to the Court thus
7 far?

8 A The percentage deal?

9 Q Any deal.

10 A I'm not aware of anybody else's deals. I know what the
11 program was, you know, when we started it.

12 Q Who started it?

13 A When Ralph started it, and he asked me to see if I'd help
14 him, so I think we did probably -- I don't know -- maybe
15 eight houses or so.

16 Q When was the first house you bought?

17 A I want to say maybe in June or so of 2009.

18 Q And you bought eight or so houses that year?

19 A Yeah, probably.

20 Q Do you know who the next investor was in the program?

21 A Not off the top of my head because I had other friends.
22 I mean there could have been two, three at the same time.
23 I'm not sure.

24 Q Explain the profit split that Realty gets upon the sale
25 of a house.

1 A On the sale of a house?

2 Q Yep.

3 A If you sell a house, then you get 50 percent of the
4 profit minus the acquisition fee.

5 Q What about expenses?

6 A If you flip -- if you flip the house, then any expenses
7 you put into it you get to take them back. If you rent, then
8 the tradeoff is you get all the rent for what the expenses
9 are.

10 MR. KWIATKOWSKI: I have no further questions.

11 THE COURT: Any redirect, Ms. McCollum?

12 MS. MCCOLLUM: No, your Honor.

13 THE COURT: All right. Thank you, Mr. Confer. You
14 may step down.

15 THE WITNESS: Thank you, your Honor.

16 (Witness excused at 2:29 p.m.)

17 MS. MCCOLLUM: Your Honor, I have no further
18 witnesses, and I rest my case in chief.

19 THE COURT: One second. All right. Thank you.
20 Mr. Kwiatkowski, does the -- do the defendants have witnesses
21 to present?

22 MR. KWIATKOWSKI: Yes, your Honor. I'd like to also
23 give an opening statement.

24 THE COURT: Oh, that's right. I forgot. You
25 deferred. Sure. Go ahead.

1 OPENING STATEMENT

2 MR. KWIATKOWSKI: Your Honor, this is a case in
3 which the plaintiff is seeking turnover of funds relating to
4 a real estate contract with my clients, the defendants. My
5 client, Jon Savoy, Butch Hassig, also Arnold Hassig, Adam
6 Hassig, 1836 Brys, Prime, and I believe it's Adam entered
7 into numerous deals with the plaintiffs based upon the
8 expectations and representations of the plaintiff providing
9 profitable properties for my clients.

10 There is three distinct phases of this relationship.
11 First, there was the terms of the deal that were hammered
12 out, and my client will show and illustrate through testimony
13 in a course of dealings with the plaintiff that that deal
14 consisted of the acquisition fees, a profit split, and a set-
15 off or offset for any losses in the properties. My clients
16 were one of the first investors in Mr. Roberts' investor
17 program. Mr. Roberts has testified that he was desperate at
18 that time, and he struck a deal that he would never strike
19 with any other investors; that they got a different deal.
20 And I think it will be clear from the testimony of Mr. Savoy
21 that that deal allowed for a recoupment of any losses on
22 properties and also that Mr. Roberts would provide honesty,
23 integrity, and follow-up regarding each and all dealings with
24 the company.

25 Mr. Roberts has shown and we have shown the Court

1 through motion practice and briefing that he's willing to
2 advance any self-serving arguments to help sway this lawsuit.
3 This lawsuit became regarding a personal vendetta against my
4 client, not regarding him being fired, and that the profits
5 that he believed were made were not paid over. It is our
6 position that there was no profits and that we're entitled to
7 a set-off of approximately \$65,000 against any future
8 acquisition fees. And to go beyond that, we believe that the
9 plaintiff has breached his original agreement that he would
10 provide profitable properties. It's our contention that
11 Mr. Roberts was happy because he was receiving the \$5,000
12 acquisition fees. He was collecting the money and was
13 throwing properties at our clients with the hopes that he
14 would be able -- they would be able to buy not knowing if
15 they were profitable properties or not. That is why my
16 clients went beyond that step to make sure in their deal that
17 they were covered. They were putting up all the cash. They
18 were taking all the risk, so they had to be covered in case
19 the plaintiff's expert strategies fell through, and that's
20 what happened in this case. We've illustrated through
21 testimony that, you know, by May 25th, 2012, the only
22 comparables that Mr. Roberts had on profit splits were 12,
23 four of which were paid by my client, so there wasn't a lot
24 of profit splits to compare, not a lot of losses to compare
25 to. We have no idea if there was 500 houses purchased and

1 sold, how many people, you know, are facing potential losses
2 going forward. Mr. Roberts testified in an affidavit in
3 front of this -- or submitted an affidavit to this Court
4 which stated that the investor program never shares losses;
5 however, in other hearings and in other adversary proceedings
6 before this very Court, he testified quite contrary to that,
7 yes, there's losses. Today he tries to rectify that with the
8 self-serving assertion, well, yes, we share losses now, but
9 we didn't do it with your client even though I was desperate
10 and willing to sign, willing to enter into any agreement with
11 him at that time.

12 Finally, this was only a business deal. The
13 plaintiff is seeking a loss -- seeking a judgment against Mr.
14 Savoy, Mr. Hassig, Arnold, Mr. Hassig, Adam, and this was
15 never a personal obligation. This was always a business deal
16 between the clients. This was never ever a deal between Mr.
17 Savoy personally. This was a deal between the entities and
18 the properties and the investor program. Thank you.

19 THE COURT: All right. Do you have witnesses?

20 MR. KWIATKOWSKI: Yes, your Honor.

21 THE COURT: All right. Your first witness, please.

22 MR. KWIATKOWSKI: The defense calls Jon Savoy.

23 JON GILBERT SAVOY, DEFENDANT'S WITNESS, SWORN

24 THE CLERK: If you can take a seat, please, and
25 state and spell your name for the record.

1 THE WITNESS: My name is Jon, J-o-n, no "H." Middle
2 name is Gilbert, G-i-l-b-e-r-t. Last name Savoy, S-a-v-o-y.

3 THE COURT: All right. Good afternoon, Mr. Savoy.
4 Go ahead, Mr. Kwiatkowski.

5 DIRECT EXAMINATION

6 BY MR. KWIATKOWSKI:

7 Q Mr. Savoy, what is your occupation?

8 A I am a commercial real estate broker. I'm the president
9 of Lee & Associates of Michigan. I've been in the real
10 estate business for 35 years, and we have 50 offices in the
11 United States.

12 Q Have you ever won any awards related to your profession?

13 A Quite a few over the years. I obtained a CCIM
14 designation in 1983, which is a designation that teaches you
15 how to purchase and sell investment real estate properties.
16 I obtained the Society of Investment and Office Realtors
17 designation in 1991. I was the Michigan commercial realtor
18 of the year in 1995. I was the Oakland County realtor of the
19 year in 2004 as awarded by Brooks Patterson. I have been a
20 CoStar power broker on a couple of occasions, and I was just
21 inducted into the Midwest Real Estate Hall of Fame last year.

22 Q When did you meet the defendant?

23 A I met the defendant in August of 2009.

24 MS. MCCOLLUM: You mean the plaintiff?

25 THE COURT: You said defendant.

1 MR. KWIATKOWSKI: Oh, I'm sorry. I'm sorry.

2 BY MR. KWIATKOWSKI:

3 Q When did you meet the plaintiff?

4 A In August of 2009.

5 Q How did that meeting come to happen?

6 A An associate of mine, Butch Hassig, had been talking with
7 Ralph Roberts about investing in foreclosure properties and
8 was very reluctant at first but agreed to meet with him, and
9 we met with him at Butch's office and had a face-to-face
10 meeting with him.

11 Q Now, you stated you're a real estate broker. Do you have
12 much familiarity with the foreclosure process?

13 A I did not at that time, no.

14 Q Did you seek out Mr. Roberts' advice regarding those
15 aspects?

16 A Yes, I did.

17 Q Describe your meeting with Mr. Roberts in August of 2009.

18 A I was very impressed with his knowledge of the
19 foreclosure real estate arena. He'd authored several books,
20 Foreclosure for Dummies, which I subsequently read, and some
21 other books, so he was purported to be an expert on the
22 topic -- well, by himself he was purported to be an expert on
23 the topic.

24 Q At that time, did you strike a deal with the plaintiff
25 regarding the investor program?

1 A We did at our second meeting, not at our first meeting.
2 We met and discussed it, and we got back together at a second
3 meeting and put together an outline of how we thought this
4 could work jointly together.

5 Q What was the terms of that agreement?

6 A The terms of that agreement were that Ralph, through his
7 program, would make us aware of potential properties that we
8 could purchase through a weekly e-mail list. He would do
9 research on valuation for us, give us opinions as to what the
10 values should be, when possible meet with or go inside the
11 properties prior to us making offers on those properties, and
12 basically show us how the process worked. I would go to
13 the -- well, I'm getting ahead of myself. Basically, he was
14 responsible for finding property, profitable properties for
15 us.

16 Q So it was key to you that Mr. Roberts found profitable
17 properties?

18 A Absolutely.

19 Q Did you discuss at the second meeting the acquisition
20 fees?

21 A Yes.

22 Q Can you explain to the Court what the acquisition fee was
23 regarding the defendants?

24 A The acquisition fee was \$5,000. We agreed that the first
25 2,500 would be due when we were the successful bidder at the

1 sheriff sale and received the sheriff's deed.

2 Q When was the second half due?

3 A The second half was due at one of two times, either
4 upon -- when we would receive title to the property after the
5 redemption period or at the time of closing.

6 Q Did you discuss the profit splits with Mr. Roberts at the
7 second meeting?

8 A We absolutely did. He was asking for 50 percent of the
9 profits, which I told him was ludicrous. It's not like I was
10 going to put up all the money and give somebody 50 percent of
11 the profits, so we agreed that the split would be 30 percent
12 to him and 70 percent to us.

13 Q Did you discuss any other items on the profit split at
14 that time?

15 A Yes. We discussed what the formula would be to arrive at
16 a calculation to determine what the profit would be on each
17 property. That basically consisted of -- Ralph was doing
18 work for each property, so he was getting a \$5,000
19 acquisition fee. We, in turn, were doing work for each
20 property to renovate, bring the property to market, acquire
21 it, you know, have the attorneys review the documents,
22 conduct due diligence, drive around by the properties, so we
23 agreed as a credit to our LLC, whichever LLC was acquiring
24 the property, that the LLC would get a \$5,000 credit against
25 the profit calculation. In addition, because we were putting

1 up 100 percent of the cash, we agreed that we would get an
2 interest credit for the money that we were putting in, which
3 would be added. We weren't paid that interest. It was a
4 credit in the calculation. I want to be clear. There's been
5 talk that we were paid that money. We were not paid that
6 money. It's been indicated that we were paid a five -- that
7 we were paid a \$5,000 credit. That's incorrect. Our paid
8 money, it was a credit to the partnership to balance that
9 out. In addition, any repairs or maintenance that were
10 required to get the property to be able to sell we would be
11 able to -- because obviously IRS Tax Code, you add that to
12 your basis. It's a tax calculation as well as a common sense
13 calculation, so any expenses, taxes that we had to pay,
14 insurance premiums, utilities because the houses were vacant,
15 city inspection fees, accounting fees, anything that was
16 necessary for each property to file an income tax return was
17 an expense to that property or would be.

18 Q And that's the formula you always used to calculate in
19 that property?

20 A In addition, if there were -- you know, we would have to
21 pay for title insurance. We would have a \$500 closing fee
22 because we handled our own closings. We learned very quickly
23 that Ralph Roberts' firm was pitiful on follow-up, and I
24 could not trust that things would be done properly, so I
25 attended all of the closings. And, in essence, to say I

1 didn't like Ralph -- I liked Ralph. He just -- they did not
2 exercise the level of professionalism that I've come
3 accustomed to in my 35 years of doing this, so I like things
4 to be done properly, and so we would -- I had my in-house,
5 Kelly Savoy, that Ralph had mentioned earlier, who's been
6 doing this for 15 years. She would handle all of the closing
7 documents with the title company.

8 Q So did you --

9 A If we had any legal fees to have the attorney review
10 documents for any reason, we would allocate those. I don't
11 know if I've missed anything.

12 Q Well, let's move on to the next crucial part of the deal
13 that you struck with Ralph. Was there any discussion of
14 losses on properties --

15 A Absolutely.

16 Q -- with Ralph?

17 A Absolutely. We were putting up 100 percent of the cash,
18 and it was made crystal clear to Ralph Roberts that we're --
19 if you're going to participate in 30 percent of the profits
20 without putting in any capital at all after being paid an
21 acquisition fee and potentially a commission if you did your
22 job properly, there's no way we were not going to offset
23 losses. A hundred percent of the losses was what our
24 agreement was, not a percentage. If we lost money on a
25 property, it was his responsibility, 100 percent of that

1 loss.

2 Q Why was it that Ralph cut a different deal for you than a
3 lot of -- like the deal that Mr. Confer just discussed?

4 A Well, I'm interested to hear that Ray was before we were
5 because Ralph told us we were the very first investors. I
6 subsequently came to learn that -- I knew they were friends,
7 and I knew Ray through business, as Ralph had mentioned
8 earlier, but I was told -- we were told that we were the
9 first investors in the program and that we would have a first
10 right of refusal on any properties until we said no.

11 Q Did that happen?

12 A No.

13 Q When was that breached?

14 A That agreement was breached probably in December of 2009.
15 We acquired our first property in September of 2009.

16 Q In that meeting with Ralph, did you also discuss rents?

17 A Yes.

18 Q What did that discussion entail?

19 A Basically, our agreement with Ralph was if originally we
20 weren't -- we didn't have -- you know, originally the
21 intention wasn't to discuss -- wasn't to rent the properties.
22 We were told by Ralph, oh, you can flip these like this.
23 This is a great market. You can just -- you get these fixed
24 up, Jon, and, you know, we'll get them sold, and you can't
25 lose, and this is the greatest thing, and, you know, blah,

1 blah, blah. So I made it clear to Ralph that if we did have
2 to rent the properties, that any of the expenses that we
3 incurred were going to be offset against any profits from
4 each property if we were forced -- we did not want to rent
5 the properties. We were required to rent them because we
6 could not sell them unless --

7 Q Why couldn't you sell them?

8 A -- unless we had owner -- we had properties -- excuse
9 me -- that we could sell. I'm referring to properties that
10 we could not sell. Ralph's firm I thought initially did a
11 fabulous job. We were in love with Ralph. It was in our
12 honeymoon -- we were in our honeymoon phase. We spent a lot
13 of time having dinners together, drinks together. I was
14 learning a lot from him at the time about foreclosure
15 properties and the nuances of acquiring of foreclosure
16 properties, so we spent a lot of time together because pretty
17 much the first properties that we sold were all simple for
18 the most part.

19 Q And those would be the Antonia property?

20 A The Antonia property sold, the people that lived in it,
21 to the cousin.

22 Q And that would be also the Raymond property?

23 A The Raymond property was a beautiful property. Not a
24 penny had to be put into that property. Kelly from my office
25 sold that property for us. We didn't even have to list the

1 property. And we paid Ralph exactly what Ralph was supposed
2 to be paid on that transaction.

3 Q And Foxcrest?

4 A Same thing. And as an aside, we always sat down when I
5 would attend the closings at Greco, and I would review the
6 profit calculation sheets face to face every single closing
7 that we had with Ralph. He knew exactly what the numbers
8 were because we provided those, and we also e-mailed those
9 out to him prior to.

10 Q So it's --

11 A Now, sometimes through normal course of business, the
12 title company would not get us the closing documents so that
13 we could anticipate what our net was. We needed our net to
14 provide -- to do the profit calculation, so if we didn't get
15 the closing papers till the day before, we didn't know what
16 the exact net was, so sometimes it would be at the closing,
17 but that was because we didn't get the closing documents any
18 sooner to be able to do that.

19 Q Let's take a look, Mr. Savoy, at Plaintiff -- or
20 Defendant's Exhibit H.

21 A Plaintiff's -- where would that be?

22 Q Defendant's H.

23 A Can you show me what that is? These are numbered. This
24 one?

25 Q This book.

1 A This book? Okay. Sorry. Is this upside down? Okay.

2 Q Do you recognize that document?

3 A Yes.

4 Q What is that document?

5 A That's for the sale of Antonia in Warren.

6 Q And this document was provided to the plaintiff?

7 A Absolutely. We were at the closing together, and the
8 interesting thing about that closing was the three brothers
9 that purchased the property all had -- their names were all
10 Mohammed.

11 Q That is interesting.

12 A So we had three -- which was unusual for me to have three
13 buyers that had the same first name.

14 Q And Mr. Roberts and/or his staff was aware of all of the
15 expenses, the insurance, accounting, licenses, office
16 supplies. Those were all provided, all discussed.

17 A Absolutely.

18 Q Why is it your position that you're entitled to those
19 expenses?

20 A Because if you file an income tax return when you acquire
21 or sell a property, there are expenses that you incur when
22 you're filing an income tax return. I mean these are normal
23 costs of doing business. He didn't put up the money. I did.
24 We did.

25 Q And that's why those are included in the expense and the

1 profit calc; correct?

2 A Yes.

3 Q Let's take a look at Exhibit I.

4 A And I will also mention, as an aside, that on that
5 Antonia property, he made more money than we did, so --
6 because he got a \$5,000 acquisition fee and 30 percent. It
7 was a -- you know, it was a quick turnaround. He made more
8 money than we did, and we put up the money, but that's fine.
9 That's the deal I made.

10 Q Are you familiar with the Raymond property?

11 A Yes.

12 Q Plaintiff -- Defendant's Exhibit I?

13 A Yes.

14 Q Did you review this sheet with the plaintiff?

15 A Yes.

16 Q And they were satisfied with the expenses?

17 A Yes. This was -- I believe this was actually our very
18 first closing, and we were all very happy. I could be wrong,
19 but I think it was our very first closing that we actually
20 had because it went very quickly. This sold almost
21 immediately. We actually had made an agreement while it was
22 still in the redemption period.

23 Q Let's take a look at Foxcrest. That's Plaintiff's
24 Exhibit -- or Defendant's Exhibit K.

25 A Okay.

1 Q Are you familiar with this document, Mr. Savoy?

2 A Yes.

3 Q What is it?

4 A You're referring to the profit calculation worksheet?

5 Q Correct.

6 A This is for a property that we sold. This was a complete
7 renovation, pretty much a gut of the property. We completely
8 renovated the entire property, completely gutted the property
9 and redid the entire -- redid the entire house.

10 Q Right, because you purchased the property for \$42,589.79?

11 A Yes.

12 Q And you spent approximately \$38,000 repairing the
13 property?

14 A Yeah. We replaced everything -- you know, pretty much
15 everything in the entire home.

16 Q And you provided this to the plaintiff, and he never
17 objected to the repairs and maintenance?

18 A Not at all. Sat at the closing. It was a young man that
19 bought that property. We sat there together. We would go in
20 a room at Greco Title before the closing. I would review the
21 paperwork with Ralph and go over this, and I'd say, "You good
22 with it?" "Yep." "Okay. Great." I mean we were in love.
23 I mean it was a honeymoon.

24 Q And can I direct you to Plaintiff's -- or I'm sorry --
25 Defense Exhibit C?

1 A Yes.

2 Q And do you recognize this document?

3 A Yes.

4 Q What is it?

5 A This is for Lowell Court in Sterling Heights. This was a
6 property that we purchased for \$48,000. The house was
7 absolutely in pristine shape. The occupant of the property
8 kept the house, as Ralph had mentioned earlier, in beautiful
9 condition. You could have eaten off the floors. We allowed
10 her to stay in the property for a longer period of time
11 because she was cooperating and let us show the house, and we
12 didn't really require that she move out until we had -- you
13 know, had a purchaser. We were very generous with her, and
14 we had a very nice relationship. I got a thank you letter
15 from her after the closing.

16 Q And you reviewed this document with Mr. Roberts before
17 the closing?

18 A Yes. And, you know, one of the -- one of the issues, you
19 know, for the repairs and maintenance, there was a fence that
20 had collapsed on the property, you know, that we had to
21 pretty much replace, so, as far as repairs and maintenance
22 and the testimony earlier that there would be no repairs and
23 maintenance is untrue. But the house was vacant between the
24 time the occupant moved out and the new buyer moved in, hence
25 the utility costs, you know, legal fees, had attorneys review

1 our documents.

2 Q Mr. Roberts never voiced an objection to any of these
3 fees?

4 A Absolutely not. He was thrilled.

5 Q Because you were entitled to those fees?

6 A Yes.

7 Q Because it was part of your deal?

8 A Correct. He was also on this transaction paid a
9 commission. I got to the closing and realized he was
10 charging me four percent, and he only -- other broker was
11 getting three, so he charged me an extra percent just
12 because, you know, he thought that he should. He was that
13 much more valuable so he could get a commission, get an
14 acquisition fee, and get his piece of the profit, which is
15 great. That's what we agreed to. Happy to pay it.

16 Q What happened with your relationship with the plaintiff
17 following the sale of these four properties?

18 A Well, the interesting thing about acquiring these types
19 of properties is when you first purchase the properties, we
20 went through a whirlwind purchase cycle where we purchased --
21 I believe that I was involved with 16 properties between
22 September of 2009 and -- I don't have the chronology in front
23 of me, but I believe through probably the end of the first
24 quarter of 2010, so it was probably about a six- or seven-
25 month time frame that we acquired all of these properties.

1 Q That's because of the redemption periods?

2 A Because of the redemption period. When you acquire a
3 property, it takes six months to twelve months to redeem, as
4 Ralph had mentioned earlier, so during that six-month time
5 frame, you've got to pay the real estate taxes. You've got
6 to pay insurance premiums on the house because you now own
7 them, and even though you can't occupy them, you want to get
8 insurance to cover the house in case somebody burns it down.
9 And, you know, in some instances we were able to get access
10 to the houses and heat them through the winter because they
11 were vacant, so there were costs associated with those homes,
12 including the acquisition fees, prior to us ever being able
13 to put them into service and do something with them with the
14 exception of the owner-occupied properties that we acquire --
15 with the exception of the owner-occupied properties that we
16 acquired, because they were -- they agreed -- as Ralph had
17 testified earlier, they agreed to stay in the property
18 from -- you know, from the time of closing.

19 And we also had situations where -- I believe it was
20 with Teppert where the occupant in the property -- in fact,
21 I'm positive it was Teppert. The occupant of the property
22 did not pay us a dime of rent until after the redemption
23 period and then agreed to lease the property, you know, at
24 that point in time.

25 Q After what we call the honeymoon phase, the four

1 properties that were sold quickly and splits paid to Ralph,
2 did you ascertain any problems with the service you were
3 receiving from the plaintiff?

4 A Yes. It really began with my staff. I have a staff in-
5 house. I have a CFO, Trina Bush, and then I have Kelly
6 Savoy, who works with me kind of in a COO as well as an
7 assistant capacity. And they were in charge of keeping track
8 of all the paper mark -- paperwork excuse me -- under my
9 review, and they -- I liked Ralph. I enjoyed spending time
10 with him. They couldn't stand him. They couldn't stand
11 dealing with his office, and they were complaining to me
12 constantly, they don't return calls, they don't ask us --
13 they don't give us documents when we ask for them, it's just
14 ridiculous the way they do business. So my staff pretty much
15 brought it to my attention first, and then I started to see
16 kind of what was going on. I think at that point Ralph had
17 built his business of selling these properties. Our
18 relationship -- you got to realize we needed time to get
19 through the redemption periods. And in one property,
20 Firwood, which turned out to be a 12-month redemption period,
21 despite the fact that prior to purchasing the property Ralph
22 told us it was six months, and it was only after that -- it
23 was our very first property -- "Oh, gee, Jon, it's 12," my
24 very first property. Well, took it with a grain of salt.
25 Okay. Stuff happens. But I was told it was six months, not

1 twelve, so what happened was we got through that six- to
2 nine-month period where everything was going great, and
3 because we were selling these properties -- and the easy ones
4 sold, and it was just so great. Then we had acquired some
5 other properties along the way that weren't so great.

6 Q Which properties would those be?

7 A Well, I would start with the property on Engleman which
8 we bought. That was probably -- the second or third week we
9 were with Ralph we bought three properties. That was one of
10 them.

11 Q Well, let's take a look at Plaintiff's -- or I'm sorry --
12 Defense Exhibit E.

13 A That property is located in Center Line, Michigan, which
14 is kind of in the middle of Warren, Michigan, kind of a mixed
15 neighborhood. I went to school near there when I was growing
16 up, so I was familiar with the neighborhood. And Ralph found
17 this property on Engleman and told us that he had went inside
18 and met with the owners. They wanted to stay. Brand new
19 kitchen. This house is great. We acquire the house. All of
20 a sudden they're not going to stay anymore. They're going to
21 leave, and they're getting divorced. And we really cannot
22 get into the house for six months because now it's in a
23 redemption period, so during that time we're getting blight
24 notices from the City of Center Line, who we don't want to
25 aggravate, so we're trying to deal with it despite the fact

1 we don't even technically own the property yet. We come into
2 that property, walk up to the door, and there's a sticker
3 from the City of Center Line. They have a little thing there
4 called city certifications that our advisor did not make us
5 aware of.

6 Q When you say "advisor," you mean Mr. Roberts?

7 A Ralph. How could he not know there were city
8 certifications if he's been the expert in this area for the
9 last 35 years?

10 Q What is a city certification?

11 A City certification is when you bring in all the
12 inspectors from the city, and they come in and they inspect.
13 They bring in an electrical inspector. They bring in a
14 plumbing inspector, heating inspector, building inspector.
15 And they came in, and they picked that property apart.
16 Replace the electrical service, replace the majority of the
17 plumbing, replace plumbing fixtures, replace doors, fix
18 doors, fix windows, get the heating system working
19 downstairs, the boiler system. Turns out, by the way, we
20 came to find out, the house had a Michigan basement. How did
21 I learn that? When I walked in for the first time, I smacked
22 my head on a beam and cut my head open because the basement
23 was only six or seven feet high. We were not aware of that
24 because we had not been inside the house. So we had to -- we
25 had to basically redo the entire house. We had a painter

1 come in, gave him a deposit of \$1,750, and he died,
2 unfortunately, two days later, so that was when we -- that
3 was how we found Michelle Welker to do the painting. She had
4 been doing some commercial work, and we were able to get her
5 in the house because we were trying to get the house turned
6 around and get it renovated.

7 Q So the Engleman transaction, for lack of a better word,
8 was a disaster?

9 A A disaster. All the doors -- you couldn't find locks to
10 fit the door. The house was built in the '20's. You
11 couldn't -- none of the doors fit. The windows -- it was
12 just a nightmare. The whole thing was a nightmare.

13 Q And Ralph --

14 A The garage was rotted.

15 Q Mr. Roberts told you that this was a winner?

16 A This was a winner. "Jon, this one" --

17 Q And you would make a profit?

18 A "Jon, this one you can sell it for, in bad shape, 45,
19 good shape 60." It's in the e-mails. It's in the exhibits.
20 "But if you want to take a land contract, I'll get you" -- I
21 think it was 70 to \$85,000.

22 Q Did you have Ralph sell this property?

23 A No.

24 Q Why not?

25 A At the time that we were -- that we were trying to market

1 the property, I was so fed up with Ralph Roberts Realty and
2 their services that they were providing to us that I didn't
3 want him to handle anything. I fired him off of the listing.
4 I couldn't get a return phone call. Ralph was building
5 this -- you know, he was gone now. He was a superstar. He
6 was meeting with all these 50 investors, and we were over
7 with because we hadn't been buying properties. I was going
8 through a divorce, so I was history. I was nothing anymore.

9 Q What did you end up selling the Engleman property for?

10 A Well, first we rented the property because we couldn't
11 sell it the first time around. Came to find out when they
12 moved out we had to do the city certs all over again, and
13 they came up with another laundry list of expenses that we
14 had -- that we had. I listed the property with Mike Kriss,
15 who's been a 40-year broker. He sold over 2,000 houses in
16 the City of Warren. He's the best I've ever seen. Showed
17 the property ten or fifteen times. It couldn't pass an FHA
18 or a VA inspection, and we had to -- we sold the property for
19 \$28,000. We had all these dogs going at the same time. We
20 were out of cash.

21 Q The LLC's were cash-strapped because of the --

22 A They were cash-strapped because we had Firwood, we had
23 Ledgestone, and we had this property, and Trailwood hadn't
24 sold, so we needed to get money out of these LLC's. You
25 know, we were running out of -- running out of cash at the

1 time, and I was going through a divorce. I couldn't take
2 personal funds and put it back in there because I was
3 prohibited by the court to do that.

4 Q Jon and -- referring to Exhibit E, Jon and Butch fee was
5 \$10,000 in this transaction.

6 A Yeah.

7 Q Why is that?

8 A Candidly, I mean our agreement that we had made with
9 Ralph was five. After the hell I went through on this house
10 because I had to be over this house no less than 50 times
11 for -- you know, for dealing with this because we didn't --
12 we didn't charge a management fee to our partners. We agreed
13 to do this. We had no idea this was going to be what it
14 turned out to be, and I was over there constantly. Butch was
15 over there constantly. We had pipes burst because there was
16 no insulation in the house.

17 Q So you were doing work that normally --

18 A Constantly.

19 Q -- contractors would be doing?

20 A Constantly.

21 MS. MCCOLLUM: Objection. Leading.

22 THE WITNESS: Constantly.

23 THE COURT: Hold it; hold it; hold it. Stop; stop;
24 stop. We can't have two or three people talking at once.
25 Okay? So, again, let me caution everybody. Question, then

1 the answer. If there's an objection, get it in when the
2 question is done before the answer starts, but certainly when
3 the question is done, so let's try it again. Mr.
4 Kwiatkowski, your question is what?

5 BY MR. KWIATKOWSKI:

6 Q Were you doing the work that contractors would be doing?

7 A Not -- well, we would be -- if we were a building
8 contractor, we would be getting a fee for what we were doing,
9 but was I in there, you know, cleaning it out and painting
10 it? No. We were hiring people to do that kind of work, but
11 we did not hire a builder to do the renovations for us. We
12 oversaw all of that ourselves.

13 Q What was the total loss on Engleman?

14 A Just shy of \$40,000.

15 Q Is it your position that the plaintiff owes you that
16 money?

17 A Yes.

18 Q Is it also -- are you entitled to a set-off for that
19 money?

20 A Yes.

21 Q Against what?

22 A Well, we had an agreement on all the properties that we
23 would -- because we were acquiring so many, despite the fact
24 they were in different entities, that we would offset profits
25 against losses. If there were losses, we would offset those.

1 Q Was the offset dollar for dollar?

2 A Yes.

3 Q Is this a similar offset agreement that was in place with
4 the acquisition fees?

5 A Yes.

6 Q So if a property was redeemed, you were -- were you
7 entitled to a credit?

8 A Yes.

9 Q And could you use that credit to pay other acquisition
10 fees?

11 A Yes.

12 Q You've alluded to it, but let's discuss Defense Exhibit
13 F. Do you have that in front of you?

14 A Yes.

15 Q Do you recognize that document?

16 A Yes.

17 Q What is that document?

18 A That's the profit calculation for 32404 Firwood in
19 Warren, Michigan.

20 Q What did you purchase that property for?

21 A \$28,286.73.

22 Q What were you able to sell it for?

23 A \$84,900.

24 Q However, the bottom line shows this property wasn't
25 profitable. Is that accurate?

1 A Yes.

2 Q Why is that?

3 A Well, first of all, when we originally purchased the
4 property, to restate, I was under the impression it was a
5 six-month redemption period when, in fact, it was twelve,
6 after which it took us two months to get the tenant -- we had
7 to evict the tenant, go to court, spend legal fees to evict
8 the tenant. We finally got him to move out of the property,
9 and when we went inside of the property, we discovered human
10 and animal feces two foot high under the stairwell in the
11 basement of the property. The occupant had not had electric
12 or heat or water for probably at least a year, so he was just
13 relieving himself and his pets underneath the stairway, so
14 the odor was staggering when we walked into the property.
15 When we came back to the property the next day, there was a
16 sticker on the property from City of Warren. City of Warren,
17 city certifications again. We were told nothing about that
18 by our expert consultant, Ralph Roberts, that the City of
19 Warren had a city certification program. When we got into
20 the property, we ended up having to replace the windows, the
21 entire kitchen, the kitchen cabinets, all the plumbing
22 fixtures, the plumbing itself or probably 75 percent of it,
23 lots of electrical work. Aluminum trim was falling off. We
24 had to spend a lot of time on furnace work, new electrical
25 service. We may have put a new garage door on. I'm trying

1 to remember. Aluminum siding on the house. Did I say
2 windows and doors? Floor coverings, tile, pretty much the
3 entire house had to be completely renovated, just completely
4 gutted and completely renovated.

5 Q Were there property taxes owing on the property?

6 A Yes. We had to pay property taxes. It took us -- to
7 acquire, get the person out -- one of the big issues we had
8 is it took us almost six months to get the odor out of the
9 property. We brought in two companies that applied some sort
10 of something to the basement walls and basement floors. We
11 couldn't get the smell out of the house. And finally we were
12 able to get the smell out of the house. Of course, we were
13 trying to do that while we were renovating the property.

14 Q Taking a look at Exhibit F, Roberts Realty, that's the
15 acquisition fee; is that correct?

16 A Yes.

17 Q Commissions. That was when you sold the property.

18 A Yes.

19 Q Paid a real estate agent; is that correct?

20 MS. MCCOLLUM: Objection. Leading.

21 THE COURT: That's overruled. Go on.

22 BY MR. KWIATKOWSKI:

23 Q The insurance.

24 A Oh, we have to have insurance on a house when you're
25 renovating it and legal fees, licenses. Candidly, I don't

1 know what that's for. Office supplies. You know, we have a
2 company. At the time I had partners. I had a real estate
3 company, and if we used products from our real estate company
4 for my personal or investments that I was with, I would be
5 cheating my other partners if I stole -- I would effectively
6 be stealing office supplies, so this huge \$13 and 25 percent
7 charge that's been repeated ten times for office supplies,
8 that's what it was for. That's why the property taxes are
9 high. You have to pay for title insurance. We had utilities
10 for almost two years. We sold the house in just under two
11 years.

12 Q Do you believe, though, just to refresh your
13 recollection, could the license fees be for rental
14 applications?

15 A Yes, probably.

16 Q And all -- can you take a look at Defense Exhibit P-3
17 right here? Do you recognize those documents?

18 A Yes.

19 Q What are those documents?

20 A These are the closing documents for the sale of the
21 property on Firwood, copies of all of the bills for the
22 insurance, repairs, maintenance, pretty much everything to
23 do --

24 Q Are those the supporting documents for each entry on this
25 profit calculation worksheet?

1 A Yes, yes.

2 Q The deal that the defendants had with the plaintiff
3 allowed you to take each and every one of these expenses in
4 figuring your net profit to the plaintiff; is that correct?

5 A Yes.

6 Q Same as that was done in the earlier splits that were
7 paid; is that correct?

8 A Yes.

9 MS. MCCOLLUM: Objection. Leading.

10 THE COURT: That's sustained, and the answer is
11 stricken. Go on, Mr. Kwiatkowski.

12 BY MR. KWIATKOWSKI:

13 Q Why didn't you pay the plaintiff in the Firwood case?

14 A We originally had paid the plaintiff.

15 Q Why wasn't -- let me rephrase the question. Why was the
16 plaintiff not paid a split on the Firwood property?

17 A Well, because by -- when we sold this property, he
18 effectively -- based upon our agreement, he owed us -- he now
19 owed us a credit. You know, he owed us this money, which
20 would be offset against future houses, so he was in -- he was
21 underwater with us at the time, so he wasn't entitled to it
22 pursuant to our agreement.

23 Q So no profit, don't have to pay.

24 A Correct. And as it relates to the sale price of this
25 property, there was some discussion about how we arrived at a

1 value. There's an e-mail in an exhibit where --

2 Q I believe that's Exhibit O.

3 A -- where we were informed by Ralph Roberts' office before
4 I fired them that the house would sell -- we should list it
5 for 79,000, and we should sell it for between 70 and 75.
6 This came from one of Ralph's salespeople, who I had been
7 trying to get out to look at the property and give me a value
8 for quite some time.

9 Q Is that Exhibit -- are you referring to Exhibit O, Mr.
10 Savoy?

11 A Sorry.

12 Q Page 3?

13 A Yes.

14 Q Paragraph 3?

15 A Exhibit O. Wait a minute. Yes. Chris Kayne. Should I
16 read what he said in the value?

17 THE COURT: You should let your attorney ask the
18 questions.

19 THE WITNESS: Okay. I'm sorry.

20 THE COURT: Go on, Mr. Kwiatkowski.

21 BY MR. KWIATKOWSKI:

22 Q Mr. Savoy, is it accurate to say that you were advised
23 that the sale price of this property should be between 70 and
24 75,000?

25 A Yes. I was advised of that by Chris Kayne of Ralph

1 Roberts Realty on Sunday, September 13th, 2011, at 3:09 p.m.

2 Q You actually sold it for more than that, didn't you?

3 A Yes.

4 Q Would there ever be a reason for you to lowball a number,
5 try to not get what you can out of a property?

6 A Well, how would that possibly make sense? I mean why
7 would I want to lowball and take less and cheat all my
8 partners out of their -- every property has four 25-percent
9 partners. Why would I want to cheat my partners out of -- by
10 taking less money for a property? No, I would never do that.

11 Q Did your partners receive any splits on these? Was there
12 any profit to distribute in the LLC?

13 A No.

14 Q Let's take a look at Exhibit J. Have you found it,
15 Mr. --

16 A Yes. I've got it in front of me, the Ledgestone.

17 Q What is Exhibit J?

18 A Exhibit J is a profit calculation worksheet for the sale
19 of the property at 36403 Ledgestone in Clinton Township.

20 Q What did you purchase the property for?

21 A 23,500.

22 Q What did you sell it for?

23 A I sold it for 69,900.

24 Q Can you describe the services you received from Ralph
25 Roberts regarding this property?

1 A It was awful and ridiculous. Couldn't get him out to the
2 properties, couldn't get a return phone call. You'd call
3 Ralph, wouldn't hear back from him. I was begging for what's
4 called a comparative market analysis. It's a very simple
5 document that any real estate agent would prepare when they
6 value a house where they give you the comparables and they
7 summarize the information. I couldn't even get that. I
8 would get a list of comparables. Well, here, you want to
9 figure it out? Do it yourself. Okay. Why would I want to
10 hire somebody and pay them a fee to sell the property they
11 can't even -- if they're too lazy to even give me a
12 comparative market analysis?

13 Q You're talking like a real estate commission?

14 A A real estate comparative market analysis.

15 Q So you were getting no follow-up?

16 A None, none.

17 Q Was there an issue regarding the property taxes on
18 LedgeStone?

19 A Yes. Part of the reason that we paid Ralph Roberts
20 Realty \$5,000 acquisition fees is that when you're purchasing
21 these properties, there's not time to purchase title
22 insurance or to even purchase a title search because even as
23 Ray had testified earlier, you have very little time to make
24 a decision, very little time. You generally find out about
25 these properties on a Wednesday afternoon or a Thursday, and

1 the sale takes place at ten o'clock on Friday because we only
2 purchased in Macomb County, so -- I forgot the beginning of
3 the question. I'm sorry.

4 Q The property taxes.

5 A Oh, so what Ralph would do is he would -- at least he
6 told us he would do this. He would go to the county
7 courthouse on Friday morning and do a record search, as he
8 had indicated in his testimony, that -- you know, to
9 determine if there were any liens, you know, I want to make
10 sure you didn't get a second lien, make sure there were no
11 back taxes, you know -- you know, make sure that they were --
12 any unexpected liens against the property because when you
13 bid on them at the sheriff sale, they become yours unless
14 it's a second mortgage that can get expunged, but taxes and
15 those types of things do not become expunged after a
16 redemption period. You're going to owe that money.

17 Q Were there back taxes owed on Ledgestone?

18 A Well, we owned the property for -- we paid a total of --
19 where are the property taxes here -- \$9,362.20 in property
20 taxes over essentially what was -- I don't have it of when
21 exactly this was -- the date this was sold, so whatever that
22 time period was, two years, you know, so, yeah, we were stung
23 right out of the -- right out of the gate. Within a couple
24 days after we acquired this, we had to run down to the Macomb
25 County -- I personally had to drive over to Macomb -- to

1 Mount Clemens -- excuse me -- courthouse to make the payment
2 because we were afraid we would lose the house through a tax
3 sale. I believe --

4 Q And this is an expense you're allowed to credit against
5 the gross; isn't that correct?

6 A Absolutely.

7 Q And you've always done that?

8 A Yes.

9 Q It was always part of the deal?

10 A Yes.

11 Q Is it true that today is the first time you've ever heard
12 of a different split, a rent split and a flip split?

13 A Yes.

14 MS. MCCOLLUM: Objection. Leading.

15 THE COURT: That's overruled. Go on, Mr.
16 Kwiatkowski.

17 THE WITNESS: Yes. Today is the first I've heard of
18 this now whole new -- all the accusations, manipulation and
19 all these things. This is the first I've heard of this, yes.

20 BY MR. KWIATKOWSKI:

21 Q For you it was always one program?

22 A Yes.

23 Q Losses, 100 percent?

24 A Yes.

25 Q Acquisition fees, split 25 up front, 25 either when title

1 vests or at closing?

2 A Yes.

3 Q Rents. Is Mr. Roberts entitled to rents?

4 A No.

5 Q Why not?

6 A Didn't own the property, not an owner in the property.
7 He's entitled to a profit when the property sells. He's not
8 entitled to -- it wasn't our interest to rent these
9 properties. Renting these properties has been a nightmare.
10 Okay. It wasn't our goal going into this thing. We were
11 told we could sell these properties. The last thing I need
12 is to be a landlord, so, no, it was never our goal to rent
13 these properties. It was our goal to own these properties
14 and sell them.

15 Q So your total investment in the Ledgestone property was
16 approximately 46,400; isn't that correct?

17 A Yes.

18 Q How much did you lose on Ledgestone?

19 A \$4,200.

20 Q There was some discussion regarding the interest expense
21 about the middle of the page that there's two interest
22 expenses on this property. Can you explain the first
23 interest expense in the middle of the page?

24 A Yes. We acquired a loan from a gentleman name Ryan
25 Farnan to acquire properties, and we were paying him -- we

1 had to pay interest on that loan.

2 Q And the interest that is discussed at the bottom of the
3 page, interest to 1836 Brys, LLC, what is that for?

4 A That's the interest credit that we received on all the
5 properties pursuant to our agreement.

6 Q And you get that interest credit in every single
7 property?

8 A Yes.

9 Q And how is it determined?

10 A It's determined based upon a per diem rate at seven
11 percent.

12 Q Based upon how long your --

13 A We own the property.

14 Q Let's take a look at Exhibit L. Are you familiar with
15 Exhibit L?

16 A Eastland -- the profit calculation for 17803 Eastland in
17 Roseville.

18 Q Now, it's the plaintiff's contention that no money could
19 possibly be owed in this case because there was a court
20 settlement. Can you describe what happened in the Eastland
21 transaction?

22 A I was out of town, and I had bid on properties at the
23 auction and was the successful bidder for this property. I
24 believe it was John Selby from Ralph's office met with the
25 homeowners, got them to agree to a lease, and I'm now hearing

1 about cash for keys. I don't know where there was any cash
2 paid for keys. I don't have any record of that, but
3 apparently a deed was given to Nail Construction. And the
4 homeowners of that property hired an attorney to unwind it,
5 as Ralph had testified, and we got a lawsuit in the mail
6 naming myself and -- you know, and Ralph and everything for
7 supposedly how Ralph Roberts Realty dealt with these people,
8 whom I had never met or spoken to. And they wanted to -- you
9 know, they were going to -- they were perusing a lawsuit, so
10 rather than do that and go to court and go through all that,
11 we agreed to settle. Ralph, of course, still got his full
12 \$5,000 acquisition fee despite the fact that he said that he
13 didn't in his affidavit, and we suffered a loss on that
14 property.

15 Q And it's your position that the loss on that property is
16 approximately how much?

17 A \$12,879.30.

18 Q So so far we've discussed Engleman where the loss was
19 approximately 40,000; is that correct?

20 A Yes.

21 Q And Firwood --

22 A Yes.

23 Q -- where the loss was approximately 8,000?

24 A Yes.

25 Q Ledgestone where the loss was approximately 4,000 and

1 Eastland where the loss is approximately 12,000; is that
2 correct?

3 A Correct.

4 Q Based on my rough math, that's approximately \$65,000; is
5 that correct?

6 A Correct.

7 Q Do you believe you are owed that money from the
8 plaintiff?

9 A I believe I'm owed it in the form of an offset against
10 past profit from one house, so, yeah, I'm owed that money.

11 Q Is the only house that made a profit after what we call
12 the honeymoon period, the four that we discussed that were
13 paid over -- that made a profit, is that the Trailwood house?

14 A Yes. That was a -- that was a very good -- that was a
15 very good transaction, very happy with that.

16 Q And you made a profit in that house of approximately
17 19,000; is that correct?

18 A Correct.

19 Q And to determine the profit, you used the exact same
20 calculation as you've used in every single house from the
21 beginning of the inception into this program?

22 A Correct.

23 Q Have you ever changed your formula?

24 A Yes. I increased the credit from 5,000 to \$10,000
25 because of the amount of work, you know, the credit --

1 seller's credit because of the amount of work that became
2 involved, you know, when you have these properties and fight
3 all this, so that would be the only change to the formula
4 that I made.

5 Q But all the expense -- were all the expense deductions
6 the same?

7 A Yes.

8 Q So the Engleman, Eastland, Ledgestone, Firwood properties
9 were disasters?

10 A Pretty much, yes.

11 Q Who found those properties for you?

12 A Ralph Roberts.

13 Q Did Ralph ever make promises to you that he would only
14 find you properties that make money?

15 A Oh, yeah, and you can't lose. I mean this is what I
16 was -- you can't lose money. It's not possible.

17 Q But you lost money?

18 A It's not possible. You can't lose money. You're buying
19 property -- we heard it earlier in testimony -- 20 to 25
20 cents on a dollar. You can't lose.

21 Q Did you lose money?

22 A Yes.

23 Q Were you surprised?

24 A Yes. At the end of it, I was surprised. It just seemed
25 like a lot of hard work for nothing.

1 Q You still own a property located at Irene; is that
2 correct?

3 A Yes.

4 Q Do you owe any money to Ralph on the Irene property?

5 A I could if we -- if we ever get our profit and loss back
6 into equilibrium. We haven't sold the property yet.

7 Q What do you mean? If Ralph paid you the \$65,000 --

8 A Yeah.

9 Q -- you're owed?

10 A Yes.

11 Q So, based on the deal, there's no upside to Irene unless
12 you're paid for the downside on all these other homes you
13 lost money on?

14 A Correct.

15 Q Does the same hold true for the Teppert property?

16 A Yes.

17 Q That due to the fact that ongoing losses in unprofitable
18 properties that the expert found, you don't have any
19 responsibility on the Teppert property?

20 MS. MCCOLLUM: Objection. Leading.

21 THE COURT: I'm going to overrule that. Go on.

22 THE WITNESS: Correct.

23 BY MR. KWIATKOWSKI:

24 Q There's two properties being sold presently on land
25 contract. Is that accurate?

1 A Yes.

2 Q What properties are those?

3 A There's a property on Duncan in Fraser and a property on
4 South Jimmy in Chesterfield Township.

5 Q In your second meeting with Mr. Roberts when you
6 discussed the terms of your agreement and solidified your
7 deal, did you discuss land contracts?

8 A Yes.

9 Q What was the agreement that was reached at that time?

10 A The agreement was that if we sold a property on a land
11 contract, whatever the balloon payment -- the amount of the
12 balloon payment would be at the -- whatever it was -- because
13 if it amortized down for any reason, you know, if -- you
14 know, we couldn't control if somebody decided to make more
15 advance payments or, you know, additional principal payments
16 because obviously as we're accepting that revenue into our
17 partnership, we're taxed on it, so it becomes a taxable
18 event. So the only way -- if he were unable to sell the
19 property for cash, as we were told we would be able to,
20 except for on this particular property -- we had had it under
21 contract to sell it for cash, but there were some structural
22 issues with the property that would have been too expensive,
23 and we couldn't get an FHA approval on that sale.

24 Q Are you talking about the Duncan property?

25 A The Duncan property. I'm sorry.

1 Q Which is Exhibit A?

2 A Yes. On the Duncan property, so we ended up selling that
3 on a land contract, and the gentleman that purchased that
4 property happened to be in the same business that was needed
5 to repair the foundation and fix the issue.

6 Q So you sold Duncan on land contract; is that correct?

7 A Correct.

8 Q Do you have any responsibilities to pay Ralph Roberts on
9 Duncan?

10 A Not at this point because he owes our partnerships money
11 right now. If everything had been profitable, I would have
12 had an obligation to pay him a 30-percent split on the
13 remaining balloon payment after our profit calculation.

14 Q Same profit calculation that's been used in every single
15 other property?

16 A Every single -- on all the properties that we've already
17 sold, the same exact formula.

18 Q So it was a no nonsense agreement with the plaintiff,
19 wasn't it?

20 A Absolutely.

21 Q Make money, pay money. Lose money, get credited for
22 money.

23 A Correct.

24 Q You were one of the first investors in the program; isn't
25 that correct?

1 A We were told we were the first.

2 MS. MCCOLLUM: Objection. Leading.

3 THE COURT: Okay. That's overruled. Go on.

4 THE WITNESS: We were told that we were the first --
5 the very first investor in the program.

6 BY MR. KWIATKOWSKI:

7 Q Did you request any special concessions from the
8 plaintiff to become a part of the program?

9 A I approached Ralph with the idea that I would with any
10 other of the real estate properties that I own. I'm partners
11 in many real estate properties around town and have been for
12 years. I'm involved in many partnerships. Some I manage.
13 Most I don't. I see the accounting statements every month,
14 and I know what's involved with what expenses are for
15 properties. And I don't have any -- I don't have any
16 properties that don't charge legal fees, professional fees,
17 you know, improvement costs. You know, I don't have any of
18 those types of partnerships --

19 Q So --

20 A -- so to me it made no sense whatsoever. You're not an
21 owner in the property. You don't own it. It's not on your
22 tax return. You're entitled to a fee based upon a formula,
23 you know, at the end game. You're not participating in any
24 of this. You don't own it. You're not -- none of their own
25 money involved in this.

1 Q Do you owe any acquisition fees to the plaintiff?

2 A No.

3 Q Is that because you're owed money?

4 A Correct. In addition, the accounting statements that we
5 received or have received -- one of the issues that we've
6 had -- I don't know how many employees Ralph Roberts Realty
7 has gone through. My guess is 20 or 25. I don't know.
8 Maybe I'm way off. But when Kim Taylor left, you can't get
9 a -- there's nothing that comes out properly. There's an
10 exhibit I got last night where there's -- they sent me an
11 invoice for Raymond, which was the first property we --
12 there's an invoice in here that charges -- attempts to charge
13 us for money that -- you know, that we paid. I mean the
14 accounting is atrocious. No clue whatsoever. No records, no
15 signed documents. We're the ones providing all the
16 documents. Nothing is coming from that side. I don't know
17 which exhibit -- oh, it's in -- excuse me. It's in the --
18 it's in the exhibit book. Exhibit 15, e-mail, Tuesday, March
19 15th, 2011. They're asking for 5,096 and 906.80, which
20 doesn't add up, and they're asking for 30 percent of the
21 upside of the property, which was paid in 2009. This is the
22 kind of crap I've been getting for the last two years, for
23 the last two and a half years, no substantiated anything.
24 Q Because that was a closing you attended with Ralph; isn't
25 that correct?

1 A Absolutely.

2 Q And they were paid?

3 A It was our very first closing.

4 Q Another of the remaining properties is the Jimmy Court
5 property; is that correct?

6 A Yes.

7 Q That's being sold on land contract?

8 A It's being sold on -- that was a zero down land contract.
9 The purchaser of that just filed -- just went through a
10 bankruptcy. There's a five-year balloon associated with that
11 contract, but I don't believe the purchaser is going to be
12 able to meet that obligation for a couple of reasons. One,
13 the value of the land contract is higher than the value of
14 the property, and, two, I don't believe that you can get a
15 mortgage for a certain amount of time after you file for
16 bankruptcy, but I'm certainly not an expert in that area.

17 Q Do you owe any money to the plaintiff based on Jimmy
18 Court transaction?

19 A No.

20 Q I'm going to go back a step just for a moment. Describe
21 the circumstances when you fired Ralph Roberts Realty.

22 A I don't know if any of the exhibits are here. I'd be
23 embarrassed to say what I said out loud, but basically we
24 couldn't get Ralph, despite the fact I had not signed his
25 listing agreements myself -- he had signed them himself -- I

1 couldn't get him to remove them from the multi-list system so
2 I could relist with a professional real estate firm, so we
3 had quite an e-mail battle going back and forth, but finally
4 we were able to get the properties into the -- you know, into
5 a professional marketing firm's hands.

6 Q And anytime you made money on a property, you paid the
7 plaintiff; isn't that correct?

8 A Yes.

9 Q Anytime you lost money, what happened?

10 A So far.

11 Q Anytime you lost money, what happened?

12 A Well, the first bundle of properties all made money.
13 Like I said, it was the honeymoon phase, so those were all
14 paid. Now we're dealing with the ugly properties we'll call
15 them.

16 Q So based on your range of the properties that were
17 purchased, some -- did some require very little rehab and
18 maintenance?

19 A Are you talking about some of the ones that we sold?

20 Q Yes.

21 A Oh, yeah. I mean we had bought some beautiful properties
22 that required very, very -- I mean they were cleaner than
23 they would have been if we'd have done it ourselves. I mean
24 they were in beautiful condition.

25 Q And on the flip side, were some of the properties

1 disasters?

2 A Yes.

3 Q And were those found by the plaintiff?

4 A Yes.

5 Q And those weren't profitable properties, were they?

6 A They were not profitable properties. We were promised
7 profitable. They were not profitable properties.

8 Q You lost \$65,000?

9 A Correct. That's correct.

10 Q Did the plaintiff claim to be a specialist at finding
11 deals?

12 A Oh, yes. I mean he gave me a copy of his book,
13 Foreclosure for Dummies. I mean he's a world-renowned expert
14 supposedly.

15 Q The Foxcrest property, for example, you paid \$38,000 to
16 rehab that property. Did the plaintiff question that
17 whatsoever?

18 A No.

19 Q Why do you think he questions the rehab costs on the
20 properties where you lost money?

21 A Because he wasn't there. He didn't bother to go through
22 the properties, and, you know, he disappeared. He wasn't
23 going over there and checking out and looking at the
24 properties and seeing what we were dealing with. It was our
25 problem now. We weren't buying -- by that -- by the time we

1 got these properties, you understand we weren't buying
2 anymore.

3 Q So when you were buying, you were -- were you top on the
4 list?

5 A Oh, top, dinner, I'm buying.

6 Q Did Ralph offer -- strike that. So once you stopped
7 buying, did the service go down?

8 A Like the real key of the service going down -- and I
9 don't recall the exact date, but he had a really good office
10 staff, Kim Taylor, and she was great. And when she left, it
11 just went like a waterfall off a cliff instantly.

12 Q Follow-up, none?

13 A None.

14 MR. KWIATKOWSKI: I have nothing further.

15 THE COURT: All right. Thank you. Ms. McCollum.

16 THE WITNESS: Could I get some water, Scott, over
17 there, please? I'm talking so much I'm thirsty.

18 THE COURT: Is that water thing empty there?

19 THE WITNESS: Yes.

20 THE COURT: Oh, okay.

21 THE CLERK: Do you want me to get some?

22 THE WITNESS: That's okay.

23 THE COURT: He can help him out if he needs it.

24 CROSS-EXAMINATION

25 BY MS. MCCOLLUM:

1 Q Mr. Savoy, can you please turn to Exhibit -- Plaintiff's
2 Exhibit 15, the second page? You testified just now that
3 this exhibit, second page, dealt with property Raymond -- the
4 property on Raymond. Can you show me where on there that
5 discusses Raymond?

6 A Excuse me. That was -- you got the wrong exhibit. It
7 was on Exhibit 15-4, not 15-2.

8 Q I see. Okay. Turning back to Exhibit 15-2, are we
9 talking about Eastland?

10 A Um-hmm.

11 Q That was sold on April 19, 2011. That's your Exhibit P,
12 1 of 5; correct?

13 A Do I have to look and tell you that it's correct, or can
14 we just say it's correct?

15 Q I asked you a question. Is it correct?

16 A P. P, 1 of 5, you said?

17 Q Um-hmm.

18 A You're talking about this whole thing, the whole --

19 Q P, 1 of 5. The face page of P, 1 of 5, is your --

20 A Yes. Okay.

21 Q -- seller's statement --

22 A Face, yes.

23 Q -- for Eastland.

24 A Yes.

25 Q It reflects a settlement date of April 19th, 2011;

1 correct?

2 A Yes.

3 Q Has a line on it there for payment on court claim;
4 correct?

5 A Yes, yes.

6 Q Did you ever tell Ralph that you borrowed money in order
7 to buy Ledgestone?

8 A Yes.

9 Q When?

10 A He knew Ryan Farnan. He knew that Ryan was going to be
11 involved. Had that conversation with him on multiple
12 occasions. Ryan lives one or two streets over from Ralph.

13 Q But you were aware that you had to purchase properties
14 through Ralph's investor program with cash; correct?

15 A Correct. How else would you come to the closing with --
16 or come to the sheriff sale with a certified check if you
17 didn't have cash?

18 Q Irene and Teppert aren't ugly properties, are they?

19 A Irene we've come to find out -- we've also now, that
20 being in the City of Warren -- thank you for asking. We've
21 now gone through two city inspections with that property, and
22 we've come to find out that they are hoarders like on the TV
23 show "Hoarders." So when you walk in the house, there's
24 hoarders. There's dog feces everywhere proven, in fact, by
25 the City of Warren's report as such. The ceiling has caved

1 in because the shower upstairs was leaking, so we have had to
2 replace the ceiling, the shower. We've spent -- the furnace.
3 We've spent a fortune fixing that place up, and it's still
4 falling apart.

5 Q You have renters in there; right?

6 A Correct.

7 Q They're paying you; right?

8 A They're paying.

9 Q If they're terrible, why don't you evict them?

10 A Because I can't sell the house.

11 Q But you could fix it and re-rent it.

12 A I could fix it and re-rent it. That's correct. I could
13 fix and re-rent. I can't sell it now because there's a lien
14 against the property, so I can't sell the property and
15 haven't been able to for the last six or eight months.

16 Q You didn't file a claim in Ralph Roberts Realty's or
17 Ralph Roberts' individual bankruptcies, did you?

18 A No.

19 Q You are aware that no matter what happens today, Ralph
20 Roberts Realty's debt to you, whatever it may be, has been
21 completely extinguished by his bankruptcy; correct?

22 A Yes.

23 MS. MCCOLLUM: I have no further questions.

24 THE COURT: Anything further, Mr. Kwiatkowski?

25 MR. KWIATKOWSKI: No, your Honor.

1 THE COURT: I had a question I wanted some
2 clarification on, Mr. Savoy, while you're there, and then, of
3 course, counsel may follow up with questions after I do that.
4 I wasn't clear what you were saying about what the terms of
5 the deal were that you had with the plaintiff here, Ralph
6 Roberts Realty, with respect to properties that you purchased
7 and later sold on land contract.

8 THE WITNESS: Yes.

9 THE COURT: I didn't understand what you were saying
10 there about -- specifically what I didn't get was what you
11 are saying the deal was regarding calculating a profit and a
12 profit split in a situation where the property -- you sell
13 the property on land contract. Can you explain that to me?

14 THE WITNESS: Yes. On a land contract -- so that
15 I'm clear, you're asking not what a land contract is. You're
16 asking what our deal -- our profit split would be on a land
17 contract; correct?

18 THE COURT: Yeah. I know what a land contract is.

19 THE WITNESS: Okay. What our agreement with Ralph
20 was because he's not an owner in the property, as we're
21 accepting principal payments -- for example, as we're
22 accepting the principal payments on a land contract, our
23 group is paying the tax on the principal portion of the
24 payment as well as the interest received, but on the
25 principal portion of the land contract payment, so our

1 agreement was we signed five-year land contract agreements.
2 And our agreement was when that -- when the balloon payment
3 was paid, whatever the principal amount was remaining due at
4 that time, we would do our profit calculation split and pay
5 the proceeds out of the balloon payment.

6 THE COURT: All right. So you didn't -- you don't
7 calculate the split based on what the amount of the balloon
8 payment is. You're merely saying there was a balloon
9 payment. That's what money is used to pay the split, if any,
10 that's owing to Ralph Roberts Realty?

11 THE WITNESS: I apologize. Can you ask that one
12 more time?

13 THE COURT: I think what you just said is --
14 indicated is that you weren't -- you don't calculate -- in
15 your view of it, you don't calculate what the profit is, if
16 any, and, therefore, what the 30 percent is, if any, that's
17 owing to Ralph Roberts from what -- the amount of the balloon
18 payment, but, rather, you simply pay whatever profit split,
19 if any, that's owing to Ralph Roberts from the money you
20 receive out of the balloon payment. Is that what you're
21 saying?

22 THE WITNESS: Yes, using the same formula that we
23 would use for the exact same formula we used in the previous
24 five or six sales that we've done, yes.

25 THE COURT: So under your view of it, Ralph Roberts

1 gets paid any profit split they are owed when the vendee
2 under the land contract, the purchaser under the land
3 contract, makes their final payment due under that land
4 contract --

5 THE WITNESS: Exactly.

6 THE COURT: -- at which point they're entitled to a
7 deed to the property and to become owners of the property.
8 You're done with it --

9 THE WITNESS: Yep. Yes, sir.

10 THE COURT: -- and the -- out of their last payment,
11 you use that money to pay whatever profit split is owing to
12 Ralph Roberts Realty?

13 THE WITNESS: Yes.

14 THE COURT: Is that it?

15 THE WITNESS: Yes.

16 THE COURT: But in terms of calculating the -- what
17 the profit split -- the profit is and, therefore, what any
18 30-percent profit split is going to Ralph Roberts Realty, if
19 any, you use the -- essentially your starting point, the
20 purchase price that you sold the property to -- the land
21 contract purchase price?

22 THE WITNESS: No, no. It would be the amount of the
23 land contract that -- you know, the amount of the land
24 contract loan amount, not the purchase price.

25 THE COURT: Well, in other words, when you're doing

1 a straight sale, what's sometimes called a flip in these
2 exhibits, you have a sale proceeds amount, and you have an
3 acquisition price sort of the top --

4 THE WITNESS: Yes.

5 THE COURT: Those are the top lines of your
6 calculation.

7 THE WITNESS: Yes.

8 THE COURT: The acquisition price, of course, is
9 what was paid at the sheriff sale by you --

10 THE WITNESS: Yes.

11 THE COURT: -- for the property to acquire.

12 THE WITNESS: Yep.

13 THE COURT: The sale proceeds number in the case of
14 a land contract would be whatever the total sale price is
15 that you charged to the buyer under the land contract, is
16 that correct, whether -- if they paid some money down plus
17 you financed some? Whatever the total amount they paid for
18 the property, that's the sale proceeds number; is that
19 correct?

20 THE WITNESS: No. Our agreement was whether they
21 put a down -- like in one instance they put zero down. Okay.
22 So he, you know, would be entitled to whatever that balloon
23 is. Another case the guy put \$25,000 down, so he's -- his
24 profit would be based on the remaining land contract payment.
25 You know, that was our least desirable way to sell property.

1 THE COURT: Well, under a land contract -- in order
2 to determine the total purchase price that you sell the
3 property for to someone who buys on a land contract, you take
4 whatever the amount they pay down and you add to that
5 whatever amount you financed through the land contract, don't
6 you?

7 THE WITNESS: Well --

8 THE COURT: You add them together?

9 THE WITNESS: Well, keep in mind we have to pay --
10 the reason we structured our agreement with Ralph this way
11 was because we have to pay capital gain tax, short-term
12 capital -- we had to pay short-term capital gain tax on that
13 sale. We had a big taxable event on top of it from that
14 sale, which nobody has brought up in the profit calculation.
15 We had to pay that when we sold the property.

16 THE COURT: In your view, does that tax liability
17 come out as an expense in the expense column, or does that
18 come right off the top of the sales proceeds number?

19 THE WITNESS: Neither. What I'm saying is the
20 reason we structured the agreement that we had with us of how
21 we would calculate that profit was based upon those types of
22 discussions.

23 THE COURT: So it doesn't matter how much down-
24 payment the purchaser -- your purchaser on a land contract
25 makes. You don't count any of that as your sort of beginning

1 point sale proceeds number in calculating the profit --

2 THE WITNESS: Correct.

3 THE COURT: -- is that right?

4 THE WITNESS: Yes, because if we were going to do it
5 that way, your Honor, the only obvious way to do it is when
6 we receive the down-payment portion, we would have paid a
7 portion of it at that time because why would we pay the tax
8 on it if we're going to calculate the profit on the entire
9 amount? We agreed that's not the way we were going to do it
10 because that was not our ideal scenario.

11 THE COURT: All right. I think I understand what
12 you're saying now. Now, if I have totally confused matters
13 and muddled the waters, the attorneys can clear it up, I'm
14 sure, with their follow-up questions if they have any, so,
15 Mr. Kwiatkowski, this is your witness, so let me ask you
16 first if you had any follow-up questions in light of the
17 questions I've asked.

18 MR. KWIATKOWSKI: I don't think so, your Honor. I
19 think you managed to -- even though you said in light, I
20 think you've got to the right result at the end of the day.

21 THE COURT: Ms. McCollum.

22 MS. MCCOLLUM: I have no further questions.

23 THE COURT: All right. So, Mr. Savoy, that's all I
24 have, too, so thank you. You may step down.

25 (Witness excused at 4:04 p.m.)

1 THE COURT: All right. Mr. Kwiatkowski, any other
2 defense witnesses?

3 MR. KWIATKOWSKI: No other defense witnesses. The
4 defense rests its case.

5 THE COURT: All right. Ms. McCollum, does the
6 plaintiff have a rebuttal case of evidence to present?

7 MS. MCCOLLUM: Your Honor, I have no rebuttal case.

8 THE COURT: So the plaintiff rests.

9 MS. MCCOLLUM: Yes. The plaintiff rests.

10 THE COURT: All right. Thank you all. Now, I want
11 to talk to the parties about -- counsel about the provision
12 that's in the final pretrial order. You might remember that
13 at the end of the final pretrial order that was entered in
14 this case at Docket 36 under Section 13 regarding briefing
15 and so forth, the parties agreed to and the Court said it
16 would entertain a post-trial briefing schedule. Do the
17 parties still want to make -- or file post-trial briefs, and,
18 if so, do you still want to follow the schedule that's put
19 out -- that's set forth in the final pretrial order, or do
20 you want to do something different?

21 MS. MCCOLLUM: Your Honor, on behalf of plaintiff, I
22 would like to file a post-trial brief. This schedule is
23 acceptable. If your Honor wants to shorten it, that's also
24 acceptable.

25 THE COURT: Mr. Kwiatkowski.

1 MR. KWIATKOWSKI: Your Honor, I also would like the
2 chance to file a post-trial brief. I'm happy with the
3 schedule as is but always will take direction from the Court.

4 THE COURT: Well, my attitude is if the parties
5 want -- post-trial briefing is fine, and what's said in the
6 final pretrial order is fine, but if the parties want to
7 agree to a somewhat shorter schedule than what the final
8 pretrial order says, that's fine with me, too. You know, the
9 burden is on you guys to do that, so, you know, you tell me.
10 If you want to make changes that you can agree on, then just
11 tell me. If not, we'll just stick with what's in the final
12 pretrial order. Ms. McCollum.

13 MS. MCCOLLUM: Your Honor, my only concern is I
14 would like to cite to the trial transcript. I know I can get
15 an expedited transcript. I just don't know how fast I can
16 get it. If I can get it such that I can file a brief within
17 seven days, I'll do it. I just don't know if I can do that.

18 THE COURT: If you want to get a transcript, that
19 seems a bit tight to me. Fourteen days seems a bit tight,
20 but hopefully you can do that. That's all right. So you
21 want to stick with what we have then.

22 MS. MCCOLLUM: I think 14 days, given that I would
23 like a transcript, yes, that's probably reasonable.

24 THE COURT: Well, given that then that's what we'll
25 do. We'll stick with the schedule in the final pretrial

1 order for post-trial briefs. One second. So to put dates on
2 the numbers, the day numbers that are in the final pretrial
3 order, then the -- under that schedule, the plaintiff will be
4 required to file a post-trial brief no later than 14 days
5 from today, which is February 4, 2014. That's a post-trial
6 brief which the final pretrial order says may include
7 proposed findings of fact and conclusions of law. Then the
8 defendant's post-trial brief will be due 14 days after that,
9 which is February 18, 2014, and then seven days after that
10 each side may file a reply brief, so that's February 25, so
11 that will be the post-trial briefing schedule.

12 Now, what I've done sometimes in the past when the
13 parties have -- were going to file post-trial briefs is
14 dispensed with oral closing arguments the day of -- which the
15 evidence finishes and instead have an opportunity for oral
16 closing arguments after the post-trial briefing has all been
17 filed to give the parties a chance to say anything they think
18 they ought to say in an oral argument in a closing argument
19 setting in light of the briefing and also give me a chance to
20 ask questions that I may have after I read the briefs, so
21 that's what I had in mind now. Does anybody have any
22 particular objection to doing it that way?

23 MS. MCCOLLUM: No, your Honor.

24 MR. KWIATKOWSKI: No, your Honor.

25 THE COURT: Well, then let's pick a date for the

1 oral closing arguments then. I can do it on the date that is
2 one week after the last briefs are due, so that would be
3 Tuesday, March 4, at 9 a.m. Now, I currently have other
4 cases scheduled for trial that day, actually one other case
5 scheduled for trial that day. If that case is still going
6 that day, what I'll do is simply delay that to start an hour
7 later or something just so that we can fit you guys in at
8 nine o'clock and not have to bump you, so does that date and
9 time work on your calendars?

10 MS. MCCOLLUM: Yes, your Honor.

11 MR. KWIATKOWSKI: Yes, your Honor.

12 THE COURT: All right. All right. So that'll be
13 the game plan. Is there anything else that we need to talk
14 about today then, Ms. McCollum?

15 MS. MCCOLLUM: Not from the plaintiff, your Honor.

16 THE COURT: Mr. Kwiatkowski.

17 MR. KWIATKOWSKI: No, your Honor.

18 THE COURT: All right. Then we'll conclude for the
19 day but not before I make this pitch. You've all seen the
20 evidence come in today, and you know what happened in the
21 trial today. The parties have already done some extensive
22 briefing of this case, the issues in the case, including
23 legal issues, in the summary judgment briefing that you
24 filed, and so, you know, you're -- both sides' counsel and
25 the principals are pretty well-aware of where this trial

1 stands at the moment. I would like to encourage counsel to
2 have at least another conversation after today about
3 settlement. I would encourage you to do that. I think I
4 recall that you have -- the parties have discussed settlement
5 more than once in the past in this case.

6 MR. KWIATKOWSKI: We've been awful close.

7 THE COURT: Not been able to settle, but I want to
8 encourage you to have another conversation, and it doesn't --
9 probably shouldn't be today or right now. It's just -- let
10 everybody kind of think about things that happened today for
11 a day or two or three or more, and then I would encourage
12 counsel to talk to each other and see whether there might be
13 a renewed possibility of settling this dispute, and, if so,
14 great. If not, then, you know, you gave it the effort, and,
15 you know, I'm certainly here to decide the case, and we're
16 certainly happy to do that if you can't settle it yourselves
17 by agreement, so we'll go from there. And if the case
18 settles, of course, you'll let us know with a stipulation or
19 proposed order, I assume, promptly, but if it doesn't, then
20 we'll see you at the oral closing argument time. Thank you,
21 all.

22 MR. KWIATKOWSKI: Thank you, your Honor.

23 MS. MCCOLLUM: Thank you, your Honor.

24 (Proceedings concluded at 4:13 p.m.)

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Opening Statement by Mr. Kwiatkowski	152

<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Ralph Roberts	8	80	128	
Raymond A. Confer	132	149		
Jon Savoy	155	200		

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Received</u>
Plaintiff's Exhibits 1-15		3
Defendant's Exhibits A-M, O, P, Q		5
Defendant's Exhibit R	84	
Defendant's Exhibit S	95	
Defendant's Exhibit T	120	

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

January 28, 2014

Lois Garrett